Supreme Court, U.S.
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~~No. 02-1192~~

# In the Supreme Court of the United States

Nos. 96-SP-817, 97-SP-1629, 97-SP-1760
99-SP-1025, 99-SP-1192

**IN RE: SIMON BANKS**
Petitioner

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ON PETITION FOR WRIT OF CERTIOARI TO
THE DISTRICT OF COLUMBIA CIRCUIT

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FROM THE DISTRICT OF COLUMBIA COURT
OF APPEALS

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Respectfully submitted,

**Dr. Simon Banks, J.D.**
**P.O. Box 17052**
**Alexandria, Va. 22302**
**[703] 703 845-9630**

193 pp

## QUESTIONS PRESENTED

Whether state courts may enforce its unauthorized practice rules against the general public and unlicensed federal practitioners, in the absence of a statute enabling it to do so, when its publication of such rules is restricted to licensed members of the bar.

Whether state court unauthorized practice rules, in the absence of a statute or law, may be referred to as a law and enforced against unlicensed federal practitioners, without violating the Due Process Clause and Sperry v. State of Florida.

Whether the highest state court of a state may regulate federal practitioners indirectly through setting conditions on practice, formulating pretextual smokescreens, such as the issuance of selective prior restraint on speech and/or through state regulatory agencies by reclassifying federal practitioners as "merchants" and their services as other than legal services.

Does *Butz v Economu.* 438 U.S. 478 (1978) which refers to the titles "Hearing Examiner" as interchangeable with "Administrative Law Judge" also apply to State Hearing Examiners performing like and similar functions, whether or not they are licensed to practice law.

Whether a state court that awards attorney's fees to its attorneys acting as judicial officers in prosecuting unauthorized practice rules, engage in conflict of interest and/or the appearance of impropriety, in contravention of judicial ethics laws

## PARTIES

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The Petitioner filed his Petition on November 26, 2002 and was returned stamped dated November 30, 2002, providing 60 days to file corrected Petition. On February 4, 2003, the Petitioner was granted 60 days to perfect his petition.

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In Re Simon Banks [May 26, 1987]

## JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), the Petitioner is appealing from a final order of the District of Columbia Court of Appeals. The Order of the District of Columbia Court of Appeals, is arbitrary and unconstitutionally has subjected the Petitioner to its Unauthorized Practice Rule without jurisdictional authority, for some 17 years, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

This is an appeal from an order dated August 29, 2002, upholding the decisions of Judge Richard A. Levie, a Superior Court Judge who has held the Petitioner in civil and criminal contempt, based upon the alleged jurisdiction that DCCA conferred upon itself, pursuant to its Rule, DC Ct. App. R. 49, in the absence of a statute. While the District of Columbia Court of Appeals [hereinafter "DCCA"] charged the Petitioner with "unlicensed practice of law," **there is no "unlicensed practice law" in the District of Columbia.** In 2002 the DCCA and its attorneys attempted to enact an unlicensed practice law. A95-97.
At all times relevant, the DC Ct. App. R. 49 did not contain any exceptions for federal practitioners. See A154. "Commentary to Rule 49©(5). See also, Exceptions to Rule 49 at A150-151.

This appeal arises out of an injunction that was initially issued by the District of Columbia Court of Appeals, **from a proceeding that originated in the District of Columbia Court of Appeals**. In 1992 the DCCA arbitrarily, in the absence of any established rules, appointed Superior Court Judge Levie to sit as an appeals judge and convene disciplinary proceedings to enforce an injunction against Petitioner that DCCA issued for alleged violation of **DC. App. R. 49 [which DCCA refers to as a law]** This 1987 injunction retroactively enjoined the Petitioner, in connection with his authorized unlicensed practice, from advertising his experience as a "judge", "trial advocate", and former title acquired in 1975, and certification acquired in 1980 of "Administrative Law Judge and Hearing Examiner," until Petitioner becomes a licensed member of the DC Bar. The DCCA further enjoined the Petitioner from **indicating** that he was a former judge and that he is the functional equivalent of a lawyer, or otherwise **indicate** that he is qualified to practice law, [See A51] and from indicating that he is qualified to practice law, until he becomes a licensed member of the bar. **See A50, A59, See also A127, A149-150.** These restrictions are not narrowly tailored and they violate the Petitioner's rights as a federal practitioner, as a former hearing examiner and administrative law judge, and operate as a regulatory taking.

There exist a question between the states of whether Butz v Economu. 438 U.S. 478 (1978) which refers to the titles "Hearing Examiner" as interchangeable with "Administrative Law Judge" also apply to State Hearing Examiners performing the same duties and functions, whether or not they are licensed to practice law?

There is further disparity between the states courts with respect to the title "Hearing Examiner" and Administrative Law Judge", whether Hearing Examiners performing the same and like judicial functions are Administrative Law Judges and are entitled to use and be conferred upon them the title and classification of "Administrative Law Judge", and "judge" whether or not they are licensed members of the Bar.

The District of Columbia Government, pursuant to the direction of DC Appeals Judge John Ferren, while on temporary leave from the court, facilitated the promulgation of the change in title of "Hearing Examiner" to "Administrative Law Judge" for Worker's Compensation Hearing Examiners. **See** A146-147. Moreover, the District of Columbia Consumer and Regulatory Affairs, changed the title "Hearing Examiner" to "Administrative Law Judge" for its "Hearing Examiners" on January 20, 1995. **See** A145.

The District of Columbia Government certified Petitioner as an "Administrative Law Judge" and "Hearing Examiner" in 1980, and in 1987 the DCCA enjoined Petitioner from using the title until he becomes a licensed member of the bar. See A59.

The primary question here is whether a the highest court of a state can use its rules which publication is restricted to licensed members of the Bar, as a substitute for a statute or law, to regulate the general public, unlicensed federal practitioners, in the absence of a statute, without violating the notice requirements of the Due Process Clause of the Fourteenth Amendment -- and in the case of the District of Columbia, without violating the plenary powers of the United States Congress. Art. 1, §8, cl 17. There exist disagreement between the highest state courts on this question.

There is further disagreement between the states whether the highest state court of a state may regulate federal practitioners indirectly through setting conditions on practice, formulating pretextual smokescreens, such as the issuance of selective prior restraint on speech and/or through state regulatory agencies by reclassifying federal practitioners as "merchants" and their services as other than legal services. **See *Banks v. D.C. Dept. of Consumer and Regulatory Affairs, 634 A.2d 433*** **(D.C. 1993). See also, Supreme Court No. 93-2002 [5/2/94].**

Because DCCA from 1985 to 2002, has been jointly engaged in retroactive and prospective rulemaking with its lawyers

assigned to prosecute Petitioner, **See** A155, to embellish Rule 49 and to protect and promote the monopoly of the District of Columbia Bar, which it supervise, it has been unwilling to provide the Petitioner with a fair trial or to dissolve the injunction(s) notwithstanding the fact that DCCA fabricated its jurisdiction over the Petitioner, the Petitioner's federal practice, and by thereafter issued injunctions based upon the sham jurisdiction that DCCA conferred upon itself pursuant to DC App. Rule 49. DCCA repeatedly denied Petitioner's motions to determine the constitutionality of Rule 49, and motions Declaratory Judgment, and motions to vacate the injunction, even after it amended Rule 49 to provide for exceptions for federal practice by federal practitioners. See A137

The DCCA, from 1987 through the present, interpreted Rule 49 as if it were a statute, as not providing the court with jurisdiction over practice before administrative agencies when applied to Kentucky attorney Benoit Brookens, and the Bellingers,[1] and to the contrary, conferring jurisdiction upon the Court and the District of Columbia Consumer and Regulatory Affairs, with respect to its application and interpretation of Rule 49 when applied to the Petitioner.[2] The DCCA's inconsistent interpretation of its own Rule, Rule 49, has on a sustained and continuous basis deprived the Petitioner of equal protection of the laws. The Court held in *Bush v. Gore,* slip op. No. 00949, 531 U.S. at 6 (2000), "Equal protection applies as well to the manner of its exercise. Having once granted the right....on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's ...(rights)...over that of another." Clearly, the lack of practice rules, rules of interpretation, and guidelines to govern DCCA's enforcement of Rule 49, has led to unequal evaluation. "The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude necessary. *Ibid.* at 7. **See** *Gore v. Harris, __So. 2d__ (slip op at 51)(citing from Bush v. Gore, slip op. No. 00-949, 531 U.S. at 6 (2000).*

The DCCA, from 1985 to the present, deprived the

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[1] *Brookens v. District of Columbia Court of Appeals,* 538 A.2d 1120, *Simon v. Bellinger,* 643 F.2d 774 (1980), *Sperry v. State of Florida,* 373 U.S. 379 [1963]

[2] *In Re Banks,* 561 A.2d 158 (D.C.App. 1987) Memorandum and Opinion; Order 18, 92-BG-652 (Jan. 13, 1995), *Banks v. Consumer and Regulatory Affairs,* 634 A.2d 433 (D.C. App. 1993] *Banks v Consumer and Regulatory Affairs,* slip Op. 91-AA-883 [Nov. 6, 1993]

Petitioner of the collateral estoppel based upon stare decisis and res judicata effect that the Petitioner is entitled to based upon DCCA's own precedents and the precedents that it has acknowledged in other disciplinary type cases, connected with its enforcement of its Rule 49 and its predecessor Rules. **See** D.C. Cir. R. 36(a), D.C. Cir. R. 28(c). ***Stare decisis*** should ordinarily preclude the DCCA from relitigating the issue with a different party in an inconsistent manner. The Supreme Court has held that "collateral estoppel applies so long as the judgment in the first suit still remains unmodified." *Southern Pac. R.R. Co. v. United States,* 168 U.S. 1, 49 (1897).

DCCA's inconsistent interpretation and application of Rule 49 against the Petitioner, is not credible and violates the Petitioner's due process rights and right to equal protection. **See** *Board of Regents v. Roth,* 408 U.S. 564 (1962), *Fuentes v. Shevin,* 407 U.S. 167 (1972), *Perry v. Sinderman,* 408 U.S. 593 (1972).

DCCA cannot regulate the citizens of the District of Columbia in the absence of an enabling statute, nor can it enforce Rule 49 as if it were a law without violating the plenary powers of Congress. Article 1§8, cl. 17.[3]

The Supreme Court of Florida held in *Bush v. Gore,* slip Op. No. SC00-2431 [Dec. 8, 2000] at 88: "...Related statutory provisions must be read as a cohesive whole. (citing *Sun Ins. Offic3e, Ltd v. Clay,* 133 So. 2d 735 (Fla. 1961) 'as stated in *Forysthe v. Longboat Key Beach Erosion Control Dist.,* 604 So. 2d 452, 455 (Fla 1992))...'a statutory provision will not be construed in such a way that it renders meaningless or absurd any other statutory provision.'" **See** *Amente v. Newman,* 653 So. 2d, *United States v. John C. Grimberg Co.,* 702 F.2d 1362, 1366 (Fed. Cir. 1983).

As the Supreme Court pointed out in *Bush v. Gore, Id. At 6 [Stevens J. dissenting],* "it is emphatically the province and duty of the judicial department to say what the law is." (citing Marbury Madison, 1 Cranch 137, 177 (1803)....."Like any other judicial interpretation of a statute, its opinion was an authoritative interpretation of what the statute's relevant provisions have meant since they were enacted. *Rivers v. Roadway Express, Inc.* 511 U.S. 298, 312-313 (1994). Id. At 6. **[Granted that Rule 49 is not a**

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[3] *Gibbons v. District of Columbia,* 116 U.S. 404, 407 (1886), *Neild v. District of Columbia,* 11 F.2d 246, 251 (D.C. Cir. 1940).

**statute, however] – although DCCA treated it as if it were a statute when applied to the general citizenry.**

**D.C. Ct. App. R. 46 II (b)(1),** predecessor to Rule 49. The Rule provides specific details regarding the import of the phrase 'practice law,' See Id. R. 46 (b)(2) & (3), and it also excludes from its scope attorneys who are 'participating…before any court of the United States' or 'before any department, commission or agency of the United States." *Id.* R. 46 II (b)(6) & 7.

The DCCA, in its opinion an Order of August 29, 2002, upheld Judge Levie's interpretation of Rule 49©(4) as being applicable to Petitioner, notwithstanding the fact that it applies to license attorneys and its publication has been to licensed attorneys. Judge Levie in Order 18 at 47, states that the court was withdrawing the privilege it granted to Petitioner pursuant to Rule 49©(4), a breathtaking departure from *Brookens v. District of Columbia Court of Appeals,* 538 A.2d 1120.[4] Moreover, this flies in the face of the exceptions that DCCA promulgated pursuant to amended Rule 49, Order M-198-96. **See Exceptions to Rule 49.** A148, A150-153, A154, A

This is a case where the Supreme Court is mandated to reject, as it has rejected outright and interpretation of state law by a

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[4] Although Rule 49©(4) specifically applies to attorneys, Judge Levie provide at 47¶3, Order 18:

> (4) Nothing herein shall prohibit any ***attorney*** from practicing before any department, commission, or agency of the United States to the extent that such practice is authorized by any rule or regulation of any such department, commission or agency, provided the person is not otherwise regularly engaged in the practice of law in the District of Columbia or is not in any manner, 3xcept as permitted by the license granted by such department, commission or agency, holding out as authorized or qualified to practice law in the District of Columbia without having become an enrolled active member of the Bar of this court.

D.C. App. R 49©(4)(Emphasis Added). Respondent continually has flouted the express limitation of the exception in that he has held himself out as authorized to practice law in the District of Columbia. Accordingly, with regard to practice before federal agencies, it is appropriate, in order to assure compliance with Rule 49 and this Order, ***to withdraw Respondent's privilege of using this exception as the basis to appear before federal agency. 32/***

state high court, that is clearly wrong, as it has in *Fairfax's Devisee v. Hunger's Lessee,* 7 Cranch 603 (1913), *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958), and *Bouie v. City of Columbia,* 378 U.S. 347 (1964).

Order 18, 92-BG-652, In Re Banks, [Jan. 13, 1995], enjoining petitioner from stating that he provides nationwide service, [**See A48, A58**] is an unconstitutional infringement upon Petitioner's rights pursuant to the Interstate Commerce Clause, the Commerce Clause. As the Court opined in *Milton S. Kronheim & Company,* slip op. No. 95-7053, 95-7168 (D.C. Cir. Oct. 10, 1995).[5]

The DCCA, the United States Attorney for the District of Columbia and the DCCA's Committee, CUPL, lack standing pursuant to Rule 49 to prosecute Rule 49 against Petitioner. **See** *Dellums v. NRC Com'n,* 863 F.2d 968 (D.C. Cir. 1988). Its appointment was an abuse of discretion.

This August 29, 2002 Order of the DCCA upholds the selective speech restrictions that the DCCA arbitrarily, capriciously and selectively subjected the appellant to from 1985 to the present. In 1987, while exercising its equitable powers, the DCCA, sitting through one of its Judges, the Honorable Judge Gallagher, arbitrarily delegated the jurisdictional authority to convene a disciplinary proceedings against petitioner, without any established hearing rules or guidelines, issued two injunctions based upon implied-inferred speech restrictions that the DCCA opined were implied and inferred in District of Columbia Court of Appeals Rule 49(b) [D.C. App. R. 49(b) [hereinafter "Rule 49"] and that the implication mandated that DCCA exempt all attorneys practicing before administrative agencies of the District of Columbia and of the United States from these implied-inferred speech restrictions.

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[5] "The first step in analyzing whether a state law unjustifiably discriminates or burdens interstate commerce under the 'negative' commerce clause is to determine whether it 'regulates evenhandedly with only 'incidental' effects on interstate commerce, or discriminates against interstate commerce." *Hughes v. Oklahoma,* 441 U.S. 332, 336 (1979)]...if a restriction on commerce is discriminatory, it is virtually per se invalid. By contrast, nondiscriminatory regulations that have only incidental effects on interstate commerce are valid unless "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."

When the Petitioner produced disclosure statements for each client in In Re Simon Banks, supra___, (1989) DCCA ruled that the Petitioner's statement that he is a Former Administrative Law Judge, nullified the disclosure statements, because the lay public believes that all judges are licensed members of the bar – notwithstanding the fact that the court made this broad speculation and conclusive presumption without any statistics or statistical study.

The Court held Petitioner in criminal contempt of Rule 49, for violating the travel restrictions that the DCCA placed upon the Petitioner, enjoining the Petitioner from indicating or stating that he provides nationwide service. See also, Order 18, 92-BG-652.

It is without dispute that at all times relevant, petitioner primary representation of clients were before administrative agencies of the United States, located in the District of Columbia. Petitioner limits his representation to administrative agencies that do not require a Bar license.

It is without dispute that petitioner held the federally funded position of Hearing Examiner with the District of Columbia Human Rights Commission, in 1975 through 1976, and with the District of Columbia Rental Accommodation Office of the DC Rental Housing Commission 1977 through 1978, prior to the D.C. Home Rule Act, when and while District of Columbia Employees enjoyed federal civil service rights.

The first injunction DCCA issued against petitioner, pursuant to pursuant to Rule 49 (b), at the request of DCCA's Committee On Unauthorized Practice of Law, [hereinafter "Committee" and/or "CUPL"], retroactively stripped the petitioner from using his title "Administrative Law Judge" "Hearing Examiner", [6] It further enjoined the petitioner from practicing before administrative agencies administrative agencies although the administrative agencies the petitioner practiced before do not require a license to practice law. See Memorandum Opinion And Judgment, No. 87-97, In Re Simon Banks [May 26, 1987], 561 A.2d 158 (1987). See A62-A64, A64-A80.

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[6] Which inferred that petitioner is (1) holding out as authorized to practice law, (2) giving the public the impression that he is authorized to practice law in the District of Columbia, in violation of D.C. App. R. 49

It is without dispute that Rule 49, at all times relevant, was never published to the general public in accordance with the District of Columbia Documents Act, §3©, D.C. Law 2-153, D.C. Code §1-1612(3)and that the DCCA and the District of Columbia Mandatory Bar which DCCA supervises, restricted the Publication of Rule 49 to licensed attorneys. **See A61.**

It is without dispute that Rule 49(b), Rule 49(c)(4), and Rule 49 per se, never legitimately or constitutionally conferred jurisdiction upon the DCCA to regulate authorized practice of unlicensed practitioners such as the petitioner before administrative agencies of the District of Columbia or of the United States. See *Sperry v. State of Florida*, 373 U.S. 379 (1963).[7] See A137, A139, and A154. See *Brookens, supra.*

It is without dispute that DCCA, in 1987, seized jurisdiction over petitioner based upon petitioner's protected speech, pursuant to the implied speech restrictions that DCCA inferred were implied in Rule 49, and thereafter fashioned an expanded injunction that DCCA has sustained against the petitioner pursuant to D.C. App. R. 49(b)(1), 49(b)(2) See Order 18, 92-BG-652, Jan. 13, 1995, at 60-62 to the present. See In re Banks, 561 A.2d 158 (1987). See A154 Commentary on Rule 49.

It is without dispute that DCCA through Rule 49(b)(1) and Rule 49 (b)(3) have conclusively declared that the conduct of the Petitioner of engaging in authorized practice before administrative agencies of the District of Columbia and of the United States,

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[7]. "The power to judicially create and enforce "rules of procedure and evidence for the federal courts (and the District of Columbia Courts) exists only in the absence of a relevant Act of Congress." *Palermo v. United States, 360 U.S. 343, 353, n. 11 (1959)(citing Funk v. United States, 290 .U.S. 371, 382 (1933) and Gordon v. United States, 344 U.S. 414, 418 (1953)).* **Congress retains** the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution. *Palermo, supra, at 345-348; Carlisle, supra, at 426; Vance v. Terrazas, 444 U.S. 252. (citing from Dickerson v. United States, slip op. No. 99-5525, at 1 (U.S. Ct. App. 4th Cir. June 26, 2000).*

involving matters of law, as "unauthorized practice of law." This interpretation is unconstitutional, arbitrary and an abuse of discretion, and in contravention to D.C. Ct. App. R. 46, the precursor to Rule 49.[8]

It is without dispute that DCCA has published to the general public from 1987 to the present, that petitioner's authorized practice before administrative agencies of the United States, and administrative agencies of the District of Columbia, constitute "unauthorized practice of law." See Amended Rule 49, effective February 1, 1998 at A151.

It is without dispute that DCCA has by conclusive presumption, determined, pursuant to Rule 49(b)(2), that petitioner's advertisements advertising that the titles "Hearing Examiner" and "Administrative Law Judge" and Petitioner's offering to provide legal services before administrative agencies, constitute "unlicensed practice of law". See Order 18, at 60.

Pursuant to Rule 49, DCCA enjoined the Petitioner from using the titles "administrative advocate", "administrative trial advocate" or any other term or description which 'reasonably denotes that Petitioner is licensed to practice law in the District of Columbia.'" See Order 18 at 60, ¶(2).

To further burden the Petitioner's ability to compete in the marketplace against licensed members of the bar, DCCA expanded its injunction, at 61 of Order 18, requiring the Petitioner to include

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[8]. "The power to judicially create and enforce "rules of procedure and evidence for the federal courts (and the District of Columbia Courts) exists only in the absence of a relevant Act of Congress." *Palermo v. United States, 360 U.S. 343, 353, n. 11 (1959)(citing Funk v. United States, 290 .U.S. 371, 382 (1933) and Gordon v. United States, 344 U.S. 414, 418 (1953)).* **Congress retains** the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution. *Palermo, supra, at 345-348; Carlisle, supra, at 426; Vance v. Terrazas, 444 U.S. 252. (citing from Dickerson v. United States, slip op. No. 99-5525, at 1 (U.S. Ct. App. 4th Cir. June 26, 2000).*

on all stationary, business cards, print and mass media, the following, in capital letters, bold type and underscored.

THIS IS TO ADVISE THAT SIMON BANKS, AND SIMON BANKS T/A JOB PROTECTORS, IS NOT ADMITTED, AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF COLUMBIA, OR ANY OTHER JURISDICTION. HE IS NOT AUTHORIZED TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY COURT IN THE DISTRICT OF COLUMBIA. HE IS NOT AUTHORIZED TO GIVE OPINIONS CONCERNING ANY PERSON'S LEGAL RIGHTS

For purposes of further burdening the Petitioner's speech, DCCA at 61 of Order 18 provides:

> This statement shall be printed, in all instances, in bold-face, underscored, in all capital letters. It shall be printed at the beginning of all documents not signed by customers in a separate paragraph in typeface no smaller than the largest typeface of the remainder of the document. With respect to each document that a customer signs, this statement shall appear at the beginning, in a separate paragraph, in typeface no smaller than the largest typeface of the remainder of the document; and the customer shall initial each line and then sign immediately below the statement indicating the actual date of execution.

The expanded injunction operate to strip the petitioner from his competitive advantage in advertising his titles former Hearing Examiner and Administrative Law Judge, and that enjoined the petitioner from indicating that the titles "Hearing Examiner" and "Administrative Law Judge" are interchangeable.

The court abused its discretion when it upheld the attorney fee award to Stuart Pierson, its employee, as a reward for prosecuting petitioner, notwithstanding the fact that Petitioner had filed complaint with the DCCA that alleged that Stuart Pierson bribed witnesses, misused the DCCA's stationery to tamper with witnesses and committed subornation of perjury, and tortuously interfered with each of Petitioner's contracts from 1992 through 19965, while engaging in a quid-pro-quo with witnesses. These

exhibits the clerk of court has been unable to locate or provide the petitioner with a copy.

AMENDMENTS TO RULE 49 ACKNOWLEDGED DCCA'S LACK OF JURISDICTION OVER UNLICENSED PRACTITIONERS PRACTICING BEFORE ADMINISTRATIVE AGENCIES

Subsequent to DCCA issuing its 1987 injunction against the petitioner, it, in collusion with CUPL which, at all times relevant, was selectively prosecuting the 1987 injunction, No. 87-97 May 26, 1987 injunction against petitioner and the injunction that DCCA issued in *In Re Simon Banks,* 561 A. 2d 158 (1989), formulated a Committee on Examination of Rule 49 under the auspices of the DC Bar, this Committee[9] amended Rule 49 three times[10], while acknowledging that it does not have jurisdiction pursuant to Rule 49 over authorized unlicensed practitioners whom restricted their practice, such as the petitioner, to administrative agencies and the federal forum. Inconsistently, DCCA cites its lack of jurisdiction pursuant to *Sperry v. State of Florida,* 373 U.S. 379 (1963).

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[9] Members of the D.C. Bar Committee on Examination of Rule 49 included, Jay Resnick Counsel to the CUPL [Committee], D.C. Bar Committee on Rule 49 Chairman, James Schaller, former chairman of the CUPL that prosecuted Rule 49 against the Petitioner that led to *In Re Banks,* 561 A.2d 158 (1987), Stuart Pierson, Chair of the CUPL whom prosecuted Petitioner that led to Order 18, 92-BG-652, Jan. 13, 1995, Richard A. Beverly, Esq. Whom Petitioner filed a previous ethics complaint against, DC Appeals Judge James A. Belson, Linda Hoffman, Esq. Attorney for the Committee who participated in prosecuting Petitioner pursuant to Rule 49 that resulted in Order 18, 92-BG-652

[10] Order No. M-198-96 (Dec. 9, 1997), See Order No. M-212-01, effective April 30, 2002, See Opinion No. 11-02, issued June 10, 2002. DCCA provide at Commentary to § 49(b)(4) that the D.C. Consumer and Regulatory Affairs Agency has authority to sanction the appellant, who's services is deemed as that of a merchant, providing, in part:

> Where a member of the public correctly understands that a person is not admitted to the District of Columbia Bar but is nonetheless offering to perform services functionally equivalent to those performed by a lawyer, that person is subject to sanction under the consumer protection statutes of the District of Columbia. See *Banks v. D.C. Dept. of Consumer and Regulatory Affairs,* 634 A.2d 433 (D.C. 1993). See **D.C. Code § 28-3903 ©((2), 1991.**

The DC Bar Examination Committee On Rule 49 was created in 1993, when DCCA ruled upon and ratified DCRA-CPPA's [Consumer Protection Procedures Act] jurisdiction of the Petitioner's practice based upon DCCA and DCRA declaring the Petitioner's legal services as that of a "merchant". However, when DCCA prosecuted Rule 49 against the Petitioner, it classified the Petitioner's services as that of a lawyer. **See** *Banks v. District of Columbia Consumer and Regulatory Affairs*, 634 A.2d 433 (D.C. App 1993); Simon Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883 (Dec. 6, 1993).

The DCCA through its Committee Chair, Stuart Pierson, Chairman of CUPL, authored a letter dated December 8, 1993, urging Roger C. Cooper, a client of Petitioner whom resides in Florida, to file a complaint against Petitioner with the District of Columbia Consumer and Regulatory Affairs Agency, upon the promise of treble damages. This letter contained a list of Petitioner's clients and these clients were on this list with their addresses and the list is described as "Interested Person's List." This group of former clients that Stuart Pierson had coerced to breach their contracts with Petitioner and join the participants of the "Interested Persons' List in bringing a class action complaint against Petitioner.

As the result of Petitioner's discovery of this list, Petitioner filed suit against each member listed along with the law firm, Barrymore & Loots, Esqs., Civil Action No. 94-00985. Stuart Pierson then influence the law firm of Hogan and Hartson, Judge Richard A. Levie's former law firm, to represent the persons contained on the interested person's list. The Petitioner then filed a complaint with the DCCA against Stuart Pierson for Witness Tampering and using the offices of the DCCA and its stationery to carryout these witness tampering actions. The persons listed on the Interested Person's List authored by Stuart Pierson were identified as potential witnesses whom were schedule to testify at the May 8, 1994 hearing that led to the expanded injunction, 92-BG-652, Order No. 18 [Jan. 13, 1995]

THE DCCA HAS BEEN ENGAGED IN LEGISLATIVE ACTIVITIES TO REGULATE AUTHORIZED PRACTICE FROM 1985 TO THE PRESENT

DCCA conspired to delegate to the DC Consumer Protection Agency, jurisdictional powers that it does not have, by upholding the DCRA's reclassification of Petitioner as a

"Merchant" performing services under the UCC pursuant to the District of Columbia Consumer Protection Procedures Act, §28-3901, D.C. Code §28-3901. This inconsistent classification of the Petitioner's legal services was surreptitiously designed to place Petitioner under the jurisdictional authority of the DCRA whom enforce DC Consumer Practice Procedures Act, §28-3901. **See** *Banks v. D.C. Dept. of Consumer and Regulatory Affairs,* 634 A\2d 433 (D.C. 1993).

Notwithstanding DCCA's acknowledgment that it does not have jurisdiction over authorized unlicensed practice before administrative agencies, DCCA delegated jurisdiction to the District of Columbia Consumer and Regulatory Affairs Agency [hereinafter "DCRA"], where it upheld DCRA's classification of the petitioner's legal services as that of a "merchant" for purposes of stripping the petitioner of the exemption provided in the DC Consumer Protection Act that exempted legal services from its jurisdiction. See *Banks v. Consumer & Regulatory Affairs*, 634 A.2d 433 (D.C. App). Two judges wrote strong dissenting opinions citing the lack of evidentiary evidence to support the conclusions reached. See harsh dissent of D.C. Ct. App. Judge Steadman. In this decision, DCCA referred to the DCRA Hearing Examiner Olga Clegg as an "Administrative Law Judge." DCCA upheld the prior restraint speech restrictions set forth in *v. Consumer & Regulatory Affairs*, 634 A.2d 433 [Dec. 6, 1993], slip op. No. 91 AA-883 [Dec. 6, 1993] that prohibited the Petitioner from indicating that he is the functional equivalent of a licensed member of the bar.

It is without dispute that the District of Columbia Government Minority Business Opportunity Commission [MBOC] certified Petitioner as "Administrative Law Judge and Hearing Examiner" February 21, 1980. MBOC Certificate No. 3495. See Appendix.

It is without dispute that the title Hearing Examiner and "Administrative Judge" and "Administrative Law Judge" have been used interchangeably in the District of Columbia by licensed Hearing Examiners and Unlicensed Hearing Examiners. [11] **See also**

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[11] **United States Civil Service Commission changed the title "Hearing Examiner" to Administrative Law Judge in 1972,** by regulation on August 19, 1972, 37 Fed. Reg. 1687, and by statute on March 27, 1978. 5 U.S.C. § 3105.5372. 7521 (Supp. 1V

D.C. Law 13-229, "Workers' Compensation Administrative Law Judges Amendment Act of 2000, changing the title of "Hearing Examiner" to "Administrative Law Judge", effective April 3, 2001. **See A146-147.** This change was promoted and facilitated by DCCA Judge John Ferren, while serving as Vice Chair of the Counsel For Court Excellence. when and while he temporarily stepped down to become D.C. Corporation Counsel, John Ferren facilitated the Office of Administrative Hearings Act, which changed the title "Hearing Examiner" to "Administrative Law Judge" in 2002. Judge Ferren has returned to the DCCA.

DCCA's injunctive orders requiring Petitioner to be licensed to practice law in the District of Columbia as a condition for using the title "Administrative Law Judge" and as a condition for practicing before administrative agencies of the District of Columbia and of the United States that do not require a license to practice law, violates the Equal Protection Clause. See *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432 (19850). Petitioner's representation of clients before administrative agencies of the United States is protected by the Supremacy Clause. **See** *Sperry v. State of Florida,* 373 U.S. 379 (1963).

DCCA 's injunctive orders issued against the Petitioner in on January 13, 1995, 92-BG-652, violate Petitioner's federal constitutional rights pursuant to the Supremacy Clause, Article V1, cl.2. *McCulouch v. Maryland,* 4 Wheat. 316, 427 (1819), *Cipollone v. Liggett Group, Inc.,* 505 U.s. 504, 517 (1992).

DCCA's prior restraint upon Petitioner speech, prohibiting the Petitioner from indicating that the titles "Hearing Examiner" and "Administrative Law Judge" are interchangeable, and prohibiting the Petitioner from advertising the same, is not

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1980) Civil Service Commission Regulation, Aug. 19, 1972 Fed. Reg. 1687. **See** *Butz v. Economou,* 438 U.S., 478, 514 (1978).

**See** *Black's Law Dictionary, 2nd Ed. at 721-722; Chevron v. U.S.A. Natural Resources Defense Council, 467 U.S. 837 (1984),* further, the United States Merit Systems Protection Board changed the title "Hearing Examiner" in 1980, and that the title of their "Hearing Examiners" to "Administrative Judge", in 1987, and the D.C. Office of Employee Appeals changed the title of their "Hearing Examiners" to "Administrative Judge" on November 12, 1991, although the official title still remains "Hearing Examiner", and the D.C. Consumer & Regulatory Affairs, ["DCRA"] Changed the title of their Hearing Examiners to "Administrative Law Judge" in 1992, and then again on January 20, 1995, thru Rulemaking. See D.C. Register, Vol. 42 No. 3, Pg 397."

supported by any compelling state interest. These prohibitions that burdens Petitioner and Petitioner's class[12] unequally and does not burden the suspect class cannot survive the "rational basis" review which the Court requires to be "rationally related to a legitimate governmental purpose." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 446 (1985). Moreover, DCCA has failed to demonstrate that its injunction will in fact alleviate the anticipated harms it posit, "in a direct and material way. (quoting *Turner Broadcasting Systems, Inc. v. FCC__U.S. at __, 114 S. Ct. at 2470). "And we must 'limit our inquiry to the "interests the state itself asserts,'" Sanjour,* 56 F.3d at 96 (quoting *Edenfield v. Fane,* 507 U.S. 761, 768 (1993).

DCCA's injunctive regulation is governed by the scrutiny outlined in *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623 (1995).

## DC COURT APPEALS RULE 49 IS UNCONSTITUTIONAL

D.C. App. R. 49 [Rule 49] is unconstitutional on the basis that it is impermissibly vague on its fact, and an arbitrary restriction on personal liberties. **See** *Chicago v. Morales, slip op. No. 97-1121 at 6 [June 10, 1999],* and because it fails to provide notice for parties that it regulates whom are not licensed members of the bar. The notice to this population of regulated must be clear and unambiguous. **See** *General Elec. Co. v. EPA,* 53 F.3rd 1324, 1328-29 (D.C. Cir. 1995), and because it fails to give ordinary citizens adequate notice of what is forbidden and what is permitted; **See** *Coates v. Cincinnati,* 405 U.S. 489, 499, and because it is overly broad and reaches constitutionally protected conduct that is permitted by federal laws. **See** *Wilson v. Yoder,* 406 U.S. 205 (1972); and because it does not provide minimal standards to guide the District of Columbia Court of Appeals' prosecutors, investigators, regulatory police; and judicial offic3ers of the Court. **See** *Kolender v. Lawson,* 461 U.S. at 358; and because it delegates too much discretion to the judiciary, the police, the DCCA's prosecutors and investigators; **See** *Smith v. Goguen,* 415 U.S. 566, 575; and because it pre-empts and undermines federal laws and rights under federal laws in violation of the Supremacy Clause, Art. 6, Cl, 2; **See** *Ham v. City of Rock Hill,* 379 U.S. 306; and because it violates the District of Columbia Publication Act and Administrative Procedures Act for failure to publish in the District of Columbia Register, rules that it enforce

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[12] authorized unlicensed practitioners that practice before administrative agencies that do not require a license to practice law.

against the general citizenry. **See** § 1-1505, § 1-1506*, § 1-1507 of the D.C. Code which requires publication of the District of Columbia Municipal Regulations and Council acts and resolutions, Chap. 15 or 16 of the Code §1532, § 1533. **See** D.C. Law 1-120 "D.C. Register Publication Act of 1976" of Pub. L. 93-198, effective April 19, 1977. (ref. 23, D.C. Register, 5050, Jan. 26, 1977). **See also D.C. Code § 1-1509(d),** which requires that parties be afforded opportunity to file exceptions and present arguments. D.C. Code § 1-262(b), (c). **See** *Mullein v. Central Hanover Bank and Trust Co.*, 33 U.S. 306, 313; *Goldberg v. Kelly*, 397 U.S. 255; and because it promotes, even encourages impermissible restraint on liberty and led to arbitrary enforcement. *Kolender v. Lawson*, 461 U.S. at 357; and because it promotes and has led to acts that have abridged the right to travel and engage in commerce. **See** *Planned Parenthood of Central Mo. V. Danforth*, 428 U.S. 52, 82-83 (1976); *Kent v. Dulles*, 357 U.S. 116, 126 (1958); and because it promotes and has led to impermissible restraint on the liberty of contract, Art. 1§10, Clause 1, and because it abridges the Privileges and Immunities Clause, Article 1V, Cl. 1. **See** *New Hampshire v. Piper*, 470 U.S. 284; and because it impermissibly operate to trespass and encroach upon the executive or legislative authority, in violation of the separation of powers. **See** *Morrison v. Olson*, 487 U.S. 654, 682, 680-681 (1988). **See** *In Re Olson*, 818 F.2d 34, 47 (D.C. Cir. 1987). **See also,** *J.H. Marshall & Assoc., Inc. v. Burleson*, 313 A.2d 587 (D.C. 1973), and because it leads to and has led to enforcement that has violated substantive due process and procedural process. **See** *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572-575- (1972); and because it impairs First Amendment right of association. **See** *Dallas v. Stronglin*, 490 U.S. 19, 23-25 (1989); and because it provides for prosecution of conduct after the conduct has already occurred, while it cannot provide the kind of advance notice that will protect a non-licensed authorized administrative practitioner from being subjected to its enforcement sanctions; **See** *Wright v. Georgia*, 375 U.S. 284, 292 (1963); **See also,** *Shuttlesworth v. Birmingham*, 382 U.S. 87, 90 (1965), and because it unconstitutionally promote view point discrimination, prohibited by the Court in *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S.__,__, Pp 7-11, and because it impermissibly regulate content of expression

**ASSIGNMENTS OF ERRORS:**

From 1985 to the present, the DCCA, knew and had reason to know that it never legitimately nor constitutionally acquired jurisdiction over the Petitioner through its Rule 49, simply because

Rule 49 is not a law, published to the general public. It chills protected speech before it happens. *Weaver v. United States Information Agency,, slip. No. 94-5406,* at 27. Notwithstanding Petitioner's clearly established rights that a reasonable person would know.

DCCA erred when it upheld Judge Levie's opinion at 47 of Order 18, 92-BG-652 (Jan. 13, 1995), opining that the Petitioner received his authority to practice before administrative agencies of the United States, from the exemptions existing in Rule 49©(4)

. The Court erred when it upheld Judge Levie's Order, ordering the Petitioner to cease stating that Petitioner provided Nationwide Service, at 1, 5-6, 8, 19-27 and 50 ¶s#(12), (13); and at 60, 62 of Order No. 18, ¶(13),(14).

The Court erred when it failed to investigate Petitioner's complaint and Motion to hold Assistant U.S. Attorney Thomas Zeno in Contempt of Court, filed on September 8, 1999, for forgery, altering official documents, for witness tampering, for making a false statement to a Superior Court Judge, for retaliation and reprisal, et cetera. See Motion to Hold Thomas Zeno in Contempt.

The Court erred and abused its discretion when it summarily disposed of Petitioner's Motions and claims for relief at 3 through 15 of Order #6, Dec. 9, 1993, thereby denied the Petitioner due process of law. See Appendix 1

The Court erred when it failed to investigate Petitioner's Complaint and Motion to hold Stuart Pierson, Chairman of CUPL, in contempt of Court for subornation of perjury, for bribery of witnesses, for witness tampering, for misuse of his official position for private gain, for misuse of the DCCA's stationery to facilitate the quid-pro-quo, et cetera. See Petitioner's Motion to Hold Stuart Pierson in Contempt of Court.

The Court erred when it failed to investigate D.C. Court of Appeals Attorney Rosana Mason, for facilitating the suspension of the Petitioner's appeal for three years, from January/February 1995 through November, 1998, and for tampering with the Petitioner's appeal of 92-BG-652, Order No. 18, issued on January 13, 1995. See Appellant's Motion to Strike and Vacate Chief Judge Wagner's Decision adopting staff attorney Rosana Mason's

response to Appellant's Complaint against Rosana Mason for Ethical Misconduct.

The Court erred when it failed to dismiss the appeal when the Committee abandoned the appeal of these consolidated cases from December 1998 through June, August 2000. Pet Reply to Stuart Pierson's brief.

The Court erred when it reopened the appeal, DCCA's Order dated December 5, 2001, to afford the appellees opportunity to cure waiver and failure to prosecute and abandonment of the case.

The Court erred when it denied the Petitioner transcripts of the proceedings held in this consolidated case after it had afforded Petitioner such right to secure the transcripts on the basis of his forma pauperis status. See Motions of Petitioner to strike the transcripts because he was not provided them prior to being required to submit his consolidated brief, and prior to the Court enjoining Petition from filing any further pleadings, Order dated Feb. 16, 1992.

The Court erred when it arbitrary, and unconstitutionally appointed Eric Holder, U.S. Attorney for the District of Columbia, to selectively enforce Rule 49 against the Petitioner federal rights under federal laws.

The Court erred when it denied the Petitioner the right to trial by jury in proceedings resulting 92-BG-652, Order No. 18, January 13, 1995. See A129-131. Susan Reilly of the EEOC, recipient of Judge Levie's Order No. 18, requesting that federal agencies use his decision of January 13, 1995, to bar the Petitioner from practicing nationwide before federal agencies, notified the Petitioner that she was, pursuant to this order, requesting that Petitioner be barred. See A81-A2. Another reason why Petitioner demanded a trial by jury, that more was at stake than $1000 and six months incarceration. See A61.

The Court erred when it denied the Petitioner's Motion for Jury Trial in the criminal contempt proceedings that arose out of 96-BG-114, and all other criminal proceedings, although it knew and had reason to know that Judge Levie, at 47 of Order 18, January 13, 1995, invited all federal agencies to use his decision to bar the Petitioner nationwide from practicing before administrative agencies of the United States. See Petitioner's Motion for Trial by Jury.

The Court erred when it denied the Petitioner's motion for a clarification of the Probation and Commitment Order, and when it issued Order H, which was based upon Order No. 18, 92-BG-652, entered in 96-BG-114, SP1038 and Orders No. 00-SP-815. See Petitioner's Motion for a More Definite Statement and to Stay Order H. See A134, A135-A136

The Court erred, abused its discretion, and acted arbitrarily, when it upheld Judge Levie's summary dismissal of Petitioner's Motions at 47-48 of Order No. 18, 92-BG-652.

The Court erred when it enjoined the Petitioner from stating that he provides nationwide service, on the basis that this Order interfered with Petitioner's rights pursuant to the Commerce Clause, and Petitioner's free Speech. See Order No. 18, 92-BG-652 (Jan. 13, 1995).

The Court erred when it denied Petitioner bond at the conclusion of the criminal contempt proceedings of 1996, when Judge Levie declared the Petitioner a threat to the community and a menace to society, although Petitioner had no criminal record.

The Court erred when it denied Petitioner's motions to recuse the Court. See Petitioner's Motion to Recuse. A135. The Court erred when it held the Petitioner without bond, pending appeal, on the basis that the Petitioner posed a threat to the community. See A131.

The Court erred when it issued the February 16, 2001 order, prohibiting the Petitioner from filing any further proceedings in court, after it had received for filing Petitioner's Motion to Recuse the Court and to hire a disinterested designee.

The Court erred when it returned the filing of the Petitioner's 189 Exhibits and Appendices to Petitioner's Amended Consolidated Brief, pursuant to its February 16, 2001 order.

The Court erred when it denied Petitioner's Motion to Vacate and/or Modify the Agreement arising out of 97-BG-114SP1038, on the basis that the Agreement was coerced. See Petitioner's Motion to Vacate and/or Modify the Agreement. See Order M (Sept. 26, 1997 and Order N, Nov. 26, 1996. See Order dated Oct. 17, 1997

The Court erred and abused its discretion when it awarded attorney's fees in the amount of $59,000 to Stuart Pierson and his law firm.. these disguised attorneys fees amounts to a smokescreen to disguise the penalty that DCCA assessed against Petitioner, disguised by DCCA, for purposes of depriving the Petitioner of a trial by jury when the amount exceeds $1000.00. See Dr. Simon Banks' Motion to Stay the Order granting Attorneys' fees. See Dr. Simon Banks' Ethics Complaint against Stuart Pierson. A135

The court erred when it failed to vacate the injunction. See Respondent's Reply to Petitioner's Opposition to Respondent Motion to Vacate the Injunction. A130-131

The Court erred when it denied the Petitioner the judicial estoppel effect that Petitioner was entitled pursuant to *Brookens v. District of Columbia Court of Appeals,* 538 A.2d 1120 (D.C. App. 1988), and *Sperry v. State of Florida,* 373 U.S. 379 [1963], Order M-198-96, and *Simon v. Bellinger,* 643 F.2d 774 (1980), which shows that Rule 49 does not constitutionally cover practice before administrative agencies.

The court abused its discretion and acted arbitrary when it issued Order dated May 9, 1996, in 96-BG-114, finding Petitioner guilty of Counts One, Two, Three, Four and Six, because the weight of the evidence was against the decision, and because the judge was bias and the evidence was tainted, and the decision was the result of the court's denial of Petitioner's Motion and demand for trial by jury. See A128-A129. See Petitioner's Motion to Recuse Judge Levie. See Respondent's Exhibits and the government's exhibits., Deborah A. Gudger Receipt for Consultant Services, Dec. 4, 1995, May 20, 1995; See A131-132.

The Court abused its discretion and acted arbitrarily when it issued Order L, August 28, 1997, when it accepted the consent agreement, without inquiring of Petitioner [Banks] whether the agreement was coerced and acquired of Petitioner's own free will, and because the agreement was the product of coercion and continuing violation of appellant's rights.

**Assignment of Errors Re Order 18, 92-BG-652, 97-SP-1761 & 97-SP-1762, permitting the subornation of perjury and perjury.**

With respect to the testimony of Carl McAllister, set forth at 65-76 at 65-76 and specifically at 71-72 of the Transcript of the May 8, 1996 hearing, the court participated in a scenario to afford

Stuart Pierson, Chair of CUPL to submit, switch and retrieve, documentary evidence that showed that McAllister was committing blatant perjury, when he stated that the Petitioner informed him that he would represent him before a jury in a court. The evidence submitted and retrieved was a disclosure statement, receipt for funds and the agreement, where McAllister acknowledged that he was informed that Petitioner was not licensed to practice law in the District of Columbia or in any other jurisdiction and that this statement was written on each receipt. At the time of this testimony, Stuart Pierson an officer of the Court, a judicial employee, had a duty, as well as Judge Levie, to retain the exhibits that Judge Levie ordered Stuart Pierson to withdraw, because it showed that McAllister was committing perjury in open court. See Transcript of the May 8, 1994 proceeding at 71-72. To further prejudice Petitioner, the Court allowed Stuart Pierson to be the custodian of the exhibits filed at the May 8, 1994 proceedings and the clerk of the Court of Appeals has been unable to provide the Petitioner with a copy of any of the exhibits because they all have been retained by Pierson.

McAllister stated in his testimony on May 8, 1994 that when he called Respondent's office he was informed by the person who answered the telephone that Respondent was in court. *Id. At 73-74 Tr. Of May 8, 1994.* The court used this testimony, arbitrarily and abusively, as an underpinning for enjoining the Petitioner and Petitioner's staff from stating that the Petitioner is in court. At 49 of Order 18¶4.

At 18 of Order 18, the court, abusively, arbitrarily, credited the testimony of Carl McAllister as a credible witness notwithstanding outright and blatant perjury committed by Carl McAllister during his testimony at 65 through 76 of the May 8, 1994 Tr. Of Proceedings. See 68, 71-72 of Tr. Of May 8, 1994. Stuart Pierson, CUPL, submitted the disclosure statement and receipt to the court, and the court then ordered Stuart Pierson to withdraw the submission. [both judicial officers violated their oath of office at this point]. This scheme engaged in by the Court and the Court's chief attorney, Stuart Pierson, operated to deprive the Petitioner of exculpatory evidence, that McAllister committed perjury, and that McAllister executed a receipt, and an agreement acknowledging that the Petitioner informed him that Petitioner is not licensed to practice law, that the services Petitioner provide is

the services of a consultant. The receipt submitted to McAllister provides the acknowledgement.[13]

At 9 of Order 18, footnote 12, the court abused its discretion and acted arbitrarily when it punished the Petitioner for stating in advertisements that he is a specialist in employment law (Id Exh. 25; May 8, 34, 43¶6). And for stating to a client that he was currently handling a court case in Detroit. (Id. At 118) of transcript. "Respondent told her that they would initially take her case to Human Rights Commission, and if unsuccessful, they would go to court. (Id. At 119) of the transcript of proceedings. This testimony regarding going to court is contradicted by overwhelming documentary evidence to the contrary. The witness executed acknowledgments and disclaimers acknowledging that the Petitioner informed her that Petitioner is not licensed to practice law.

The Court further abused its discretion at 32 of Order 18, when and where it provides [as an excuse for returning evidence of perjury to Stuart Pierson], a disclaimer.[14]

However, it was only during the direct examination testimony of Carl McAllister, being conducted by another attorney, Mr. Fitch, did the court interject, and request that Stuart Pierson take over so that the court could alert Pierson of a problem that Pierson might want to avoid concerning perjurious testimony of Carl McAllister. Pierson, responded, after the following exchange between attorney Fitch who had been conducting the direct examination of McAllister, when the court asked Pierson to step in. Pierson, responded, after the following between attorney Fitch and, after approaching the bench, (the Court and Pierson) as follows: (at 65 of Tr. Of May 9, 1994 proceedings:

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[13] "I, Carl McAllister, acknowledge that I have been advised that Simon Banks/Job Protectors, will not provide any representation service before any court and that all consultant services will be limited to administrative agencies of the United States and the various States of the United States.

[14] The Court: "Respondent further claims Mr. McAllister testimony should be stricken because the Committee offered documents which were not served upon Respondent, as required by this Court's Orders of October 27, 1993 and November 30, 1993. This court, however, did not admit those documents into evidence because the Committee did not comply with those orders. (May 9, Tr. At 72). Moreover, Mr. McAllister made no reference in his testimony to the contents of those documents. The documents, therefore, provide no basis for striking Mr. McAllister's testimony."

(By Mr. Fitch of McAllister)

Q Do you recognize what Exhibit No. 80 – what Exhibit CX82 is?

THE COURT: [pursuant to the Pierson-Levie judicial conspiracy] Just a second, please, Mr. Fitch.

Mr. Pierson, can we step back in time for a moment, in terms of the ground rules that were developed back in October and November of last year? I thought my recollection – well, my recollection was that you were to supply witnesses and documents.

MR. PIERSON: Yes, your Honor. What is occurring here, Your Honor, is that there have been subsequent complaining witnesses who have come to us, and as soon as we have received their identify, we of course, let Mr. Banks know. Mr. McAllister was on the list that we provided before. These documents, which Mr. Fitch has, we were not able to get from Mr. McAllister until recently. We feel it is not necessary to his testimony that we present the documents. However, since we received them, we thought it only appropriate that we notice the documents when we received them, and then we would give Mr. Banks an opportunity to see them. If the Court would rule that because these were not transmitted at a prior time, we cannot introduce them. We can go ahead with the vi'va vo'ce evidence anyway (*?)

THE COURT: I'm not going to admit these because the ground rules; he's paying a consequence by way of sanctions for not complying with them. Therefore, I think it only appropriate that I hold the Committee to the same ground rules to the letter. So, I will not consider these.

MR. FITCH: Why don't I retrieve from you, Mr. McAllister the exhibit which I handed to you."

To further prejudice the Petitioner's right to a fair trial, the Court then turned all of the exhibits over to Stuart Pierson rather than the clerk of the Court, as the custodian of the records. And when the Petitioner complained and filed a motion for the production of these records, the motion failed on death ears. Mr. Brooks of the D.C. Court of Appeals Office, informed the Court and the

Petitioner that he did not have these exhibits. Judge Levie's secretary and law clerk stated that Mr. Pierson had possession of these exhibits. All exhibits of the May 8, 1994 proceedings.

At 10 Order 18, the Court abused its discretion and acted arbitrarily when it punished the Petitioner for displaying his law degree, that Sonya Hall characterized as a license. Punishing the Petitioner for stating he provides nationwide service and enjoining the Petitioner for stating he provides nationwide service. **See** Retainer agreement, Exhibits, privacy release, dated April 13, 1990 (Id. Exh. 22), receipt dated April 13, 1990, Exh. 23, Notice of Representation, Exh. 24. Sonja Hall signed a disclosure statement and receipt acknowledging that she was made aware that Petitioner is not an attorney, and is not licensed to practice law.

At 11 of Order 18, the Court abused its discretion and acted arbitrarily when it punished the Petitioner for having law books and an environment that looked like a law office. "Ms. Jane Harris . (100-101). Ms. Harris asked respondent to help her concern a problem with promotion at a **federal agency.** Harris also signed acknowledgements acknowledging that Petitioner informed her that he is not licensed to practice law.

At 12 Order 18, the Court abused its discretion and acted arbitrarily when it credited the testimony of LaVerne King (May 9, Tr. At 107) who testified that Respondent never told her he was not licensed to practice law, notwithstanding her signing, a disclosure statement containing her acknowledgement that she was made aware that the Petitioner is not an attorney, and having signed an agreement that said the same, and that LaVerne King signed a retainer agreement that referred to Petitioner's service as "consultant services."

At 13 Order 18, the court abused its discretion and acted arbitrarily when it credited and punished the Petitioner for hanging degrees on Petitioner's wall. "King stated that Respondent hung degrees and other things on his office wall so that he "looked like he was really a lawyer." (Id at 96 of May 9, 1994 Tr.)

In connection the Court's revocation of the Petitioner's probation, based upon the testimony of Ronda Reid, the Court acted arbitrarily and abused its discretion when it determined that the testimony of Rhonda Reid, a college graduate and a graduate of the Police Academy, was credible, when she testified that she did not understand the disclosure statement, the receipts, the retainer

agreement, and the acknowledgments she signed which provided that the Petitioner is not an attorney, is not licensed to practice law. **See A107-112.**

Petitioner pray this Honorable Court reverse the DCCA and remand the case for a ruling upon the constitutionality of Rule 49 per se and as it has been enforced against Petitioner. Petitioner pray that this Court hold that Petitioner is entitled to use the title former Administrative Law Judge with respect to Petitioner's former employment as Hearing Examiner and Chief Hearing Examiner.

Respectfully submitted,

Dr. Simon Banks, J.D., pro se

**THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**

Nos. 97-SP-817, 97-SP-1629, 97-SP-1760, 97-SP-1025, & 99-SP-1192

**IN RE SIMON BANKS,** **SP1038-96**
**SP-BG-114**

**September 26, 2003**

Order denying appellant's petition for rehearing en banc

**PER CURIAM,**

**Copies to:**

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**DISTRICT OF COLUMBIA COURT OF APPEALS**

Nos. 96-SP-817
97-SP-1629
97-SP-1760
97-SP-1761
97-SP-1762
99-SP-1025
99-SP-1192

IN RE SIMON BANKS, APPELLANT.

Appeals from Orders Issued by a Judge of this Court

**(Argued June 24, 2002 Decided August 29, 2002)**

Simon Banks, *pro se*.

*Anthony C. Epstein* for the Committee on Unauthorized Practice of Law.

*John R. Fisher*, Assistant United States Attorney, with whom *Roscoe C. Howard, Jr.*, United States Attorney, was on the brief, for the United States.

*Stuart F. Pierson* filed a brief *pro se*.

Before WAGNER, *Chief Judge*, and SCHWELB and FARRELL, *Associate Judges*.

FARRELL, *Associate Judge*: These cumulative appeals challenge in substance an adjudication of civil contempt and a later conviction for criminal contempt both resulting from appellant's disregard of injunctions issued by this court against the unauthorized practice of law. He presents a barrage of arguments why both of those adjudications exceed our authority to regulate his conduct, in particular his business of representing persons before federal and local administrative agencies. We sustain the contempt orders in all respects and uphold as well the order directing appellant to pay partial attorney's fees

1 Judge Gallagher was designated to conduct the proceedings pursuant to what is now D.C. App. R. 49 (e)(3) (2002). of members of the Committee on Unauthorized Practice of Law (the "CUPL" or Committee), which sought to enforce the court's prior injunction.

**I. Background** Appellant, hereafter Banks, has never been a member of the Bar of this court or any other court, federal or state, despite graduating from law school in 1975. His confrontations with the CUPL and this court have spanned nearly three decades. In 1984 and 1985, the CUPL received numerous complaints about Banks and his company, Job Protectors, concerning his use of advertising materials and statements, oral and written, to solicit legal business and to represent persons before federal and local administrative and regulatory agencies. In 1985, Banks and the CUPL reached a settlement agreement whereby, among other things, he would cease advertising the words "former administrative law judge," "esquire" or other words suggesting his membership in the legal profession in soliciting clients for representation before various agencies. When he failed to abide by these conditions, the CUPL sought injunctive and other relief from this court under then Rule 49 (b) of the rules of this court. Following evidentiary hearings in 1987, Senior Judge Gallagher of this court1 found that Banks "had held himself out to the public as being a qualified member of the District of Columbia Bar by creating, or fostering, the illusion that he is licensed to practice law in 2 "Such misimpression," Judge Gallagher found, "has been generated and fostered by respondent through various media, including advertisements in the yellow pages, newspapers, and on the radio, and representations made in resumes, business cards, stationery, and other verbal and written descriptions of his business." 561 A.2d at 163. Although Banks' practice appeared to be substantially confined to appearances before federal and District administrative agencies, he had misrepresented that he "could handle cases in a court of law all the way to the Supreme Court." *Id.* at 162. Moreover, the judge found, Banks had "fail[ed] to disclose his status with respect to Bar membership to prospective and actual clients"; his "'disclosure statement,' as a practical matter, did not actually alert most of his clients that he was not licensed to practice law in the District of Columbia." *Id.* at 163. the District of Columbia," in violation of Rule 49 (b). *In re Banks*, 561 A.2d 158, 163 (D.C. 1987) (*Banks I*).2 Accordingly, the judge enjoined Banks, among other things, from: (1) Representing any person, other than himself, or any corporation, association, partnership, organization, or other entity in any court in the District of Columbia unless he is a member of the bar of the court in which such representation takes place;

(2) Using . . . any . . . term or description which reasonably denotes that [he] is licensed to practice law in the District of Columbia; (3) Using . . . any . . . term or description . . . which reasonably denotes that [his] former employment as a hearing examiner constitutes a qualification or license to practice law in the District of Columbia; [and] (4) Using any advertising materials, business cards, firm resumes, personal resumes, firm descriptions, stationery, personalized forms or any other business documents relating to representation of individuals before administrative agencies or courts in this jurisdiction which do not expressly state in a separate paragraph and in one complete sentence at the outset of the document that [he] is "not admitted to the practice of law in the District of Columbia or any other jurisdiction." *Id.* at 168. In 1989, this court denied Banks' request for rehearing en banc. *See Banks I*, 561 A.2d at 158 (caption). 4 3 During oral argument in this court, Banks asserted several times that his retainer agreements, disclosure statements and other business papers contained all of the proper disclaimers required by the 1987 injunction. It appears from the record that some of these documents contained only a portion of the required language, leading Judge Levie to determine that Banks had "consistently fail[ed] to comply" with the injunction because the documents either included information prohibited by the 1987 injunction or failed to include all of the required disclaimers.

**A. The Civil Contempt** Despite this injunction, Banks continued to misrepresent himself as the functional equivalent of a lawyer. *See, e.g., Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 634 A.2d 433, 438 (D.C. 1993) (*Banks II*). In 1992, therefore, the CUPL initiated civil contempt proceedings against him for alleged violations of the 1987 injunctive order. In May 1994, the Honorable Richard A. Levie of the Superior Court, designated a judge of this court pursuant to D.C. Code § 11-707 (a) (2001), held an evidentiary hearing on the contempt petition. During this hearing, the CUPL presented substantial testimonial (eleven witnesses) and documentary evidence (forty-one pieces) that Banks had failed to comply with the 1987 injunction. The evidence revealed, *inter alia*, that Banks told potential clients he was an attorney, even at times following his signature with "Esq." or pointing to a license on the wall that indicated he was an attorney; that he used stationery with printed terms such as "Representation by Former Administrative Law Judges" and "Nationwide Representation" without the required disclaimers;3

and that he had advertised in the *Federal Times*, in the *American Weekly*, and on local radio that he was a former administrative law judge. Banks himself did not attend the hearing, although he had been made aware of the date, time, and place. In January 1995, Judge Levie issued lengthy findings of fact and concluded that Banks had "flagrantly, intentionally, repeatedly and contumaciously violated virtually every provision of the Court's 1987 injunction" (Order #18). Indeed, the judge explained, "[t]he only difference between this Court's findings and those of Judge Gallagher is the passage of time." Banks "continued to use terms . . . calculated to mislead . . . unsuspecting members of the public unlearned in the law"; he "fail[ed] to include the required disclaimer in the required placement on all his business papers"; and, among other similar misrepresentations, he "continu[ed] to refer to himself as going to court and [had] his secretary indicate that he was in court when he was not available to callers." Consequently, Judge Levie decided that "an expanded and stricter injunction is warranted," and enjoined Banks from performing any of fourteen separate activities, among which are: * * * * (3) Using such terms to describe himself or his qualifications as "administrative law judge[]," "administrative trial advocate," any abbreviation of the foregoing terms, or any other similar term or description also which reasonably denotes that [Banks'] former employment as a hearing examiner constitutes a qualification or license to practice law in the District of Columbia; (4) Describing his business as providing legal representation in any field, describing his professional or business activity as going to, or acting in court, or describing his business as providing nationwide representation; . . . (6) Using any advertising materials, business cards, firm resumes, personal resumes, firm descriptions, station[e]ry, personalized forms or any other business documents relating to representation of individuals before administrative agencies or courts in this jurisdiction which do not expressly state:

**THIS IS TO ADVISE THAT SIMON BANKS, AND SIMON BANKS T/A JOB PROTECTORS, IS NOT ADMITTED, AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF COLUMBIA, OR ANY OTHER JURISDICTION. HE IS NOT AUTHORIZED TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY COURT IN THE DISTRICT OF**

**COLUMBIA. HE IS NOT AUTHORIZED TO GIVE OPINIONS CONCERNING ANY PERSON'S LEGAL RIGHTS.**

This statement shall be printed, in all instances, in bold-face, underscored, in all capital letters. It shall be printed at the beginning of all documents not signed by customers in a separate paragraph in typeface no smaller than the largest typeface of the remainder of the document. With respect [to] each document that a customer signs, this statement shall appear at the beginning, in a separate paragraph, in typeface no smaller than the largest typeface of the remainder of the document; and the customer shall initial each line and then sign immediately below the statement indicating the actual date of execution; (7) Continuing to represent any client, person or entity presently being represented without giving such person or entity prompt notice of [Banks'] lack of admission to the District of Columbia Bar, and without providing the notice required in paragraph (6) above and obtaining from such person or entity an initialed, signed and dated acknowledgment of that notice, . . . (13) Otherwise engaging in any manner in the practice of law in the District of Columbia, as that term is defined in [Rule 49 (b)(3)], or in any conduct that holds Respondent out as authorized or qualified to practice law in the District of Columbia, or in any other conduct prohibited by [Rule 49 (b)]; and (14) Representing any person, other than himself, or any corporation, association, partnership, organization or other entity before any federal agency by relying exclusively on [Rule 49 (c)(4)] as the basis for such representative capacity. 4 At the time, Rule 49 (c)(4) stated: Nothing herein shall prohibit any attorney from practicing before any department, commission, or agency of the United States to the extent that such practice is authorized by any rule or regulation of any such department, commission or agency, provided the person is not otherwise regularly engaged in the practice of law in the District of Columbia or is not in any manner, except as permitted by the license granted by such department, commission or agency, holding out as authorized or qualified to practice law in the District of Columbia without having become an enrolled active member of the Bar of this court. In regard to paragraph (14), Judge Levie withdrew Banks' privilege to use Rule 49 (c)(4) "as the basis to appear before any federal agency,"4 but added this qualification: "Any such federal agency may permit [Banks] to practice before it, so long as the agency rules do not rely exclusively on Rule 49 (c)(4) as the basis for an individual to

represent persons before it." The judge expressly did not address practice by Banks before regulatory agencies of the District of Columbia, since at the time there was "no exception in Rule 49 [for] practice before District of Columbia agencies by persons not admitted to practice law in the District of Columbia." Within Order #18, Judge Levie also permitted members of the CUPL to recover $63,997.85 in attorney's fees and costs that related to the adjudication of contempt. We discuss the propriety of that award in Part II. C., *infra*.

**B. The Criminal Contempt** On February 7, 1996, the Office of the United States Attorney initiated criminal contempt proceedings against Banks for violations of the 1995 injunction. Designated again to handle the proceedings, Judge Levie issued an order to show cause presenting six counts of alleged violations of Order #18. Counts One and Two alleged that on March 26 and April 2, 1995, respectively, Banks willfully disobeyed paragraphs (3) and (6) of Order #18 by placing advertisements in the *Washington Post Magazine* that described him as a former administrative law judge without the statement required by paragraph (6). Count Three alleged that on April 24, 1995, Banks willfully disobeyed paragraphs (3), (4) and (6) of Order #18 by placing an advertisement in the *Federal Times* describing himself as a former administrative law judge and stating that he provided nationwide representation, without the statement required by paragraph (6). According to Count Four, on April 7, 1995, Banks sent to the *Federal Times* a letter printed on letterhead stationery that violated Order #18 in the same fashion. Count Five alleged that, while representing Stephen Spencer between January 13, 1995, and January 6, 1996, Banks did not comply with paragraph (7). And Count Six charged that on December 4, 1995, he violated paragraphs (3), (4), (6) and (7) by describing himself as a former administrative law judge, stating that he provided nationwide representation, and not obtaining the initials of his client, Deborah Gudger, acknowledging the disclaimer while he represented her before an administrative agency. Following a non-jury trial, Judge Levie found Banks guilty of criminal contempt of court for Counts One, Two, Three, Four, and Six, and not guilty of Count Five. In subsequently denying his motion for release pending sentence, the judge stated that this conduct amounted to "conscious actions taken by [Banks] to ignore the Court's order and to deliberately . . . foster to the public the impression that he was an attorney and/or a former judge." Judge Levie then

sentenced Banks to concurrent prison terms of 178 days, which he suspended in favor of five years' probation on conditions that included compliance with the injunction. In August 1997, after a hearing, the judge revoked the probation on finding repeated violations of the conditions and sentenced Banks to 175 days in prison, suspending execution of all but 21 days in favor of renewed probation. As a condition of this probation, Banks agreed to cease representing, or in any manner participating on behalf of, clients before any federal, District of Columbia, or state administrative or regulatory agency. Banks signed the agreement indicating his consent.

**II. Discussion** Although they should not need restating, Banks' arguments oblige us at the outset to repeat certain basic principles. "This court has the 'inherent and exclusive authority to define and regulate the practice of law in the District of Columbia.'" *Banks II*, 634 A.2d at 436 (quoting *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1125 (D.C. 1988), and citing D.C. Code § 11-2501 *et seq.*). The court "also exercises some [but not exclusive] authority over the unauthorized practice of law by nonlawyers . . . ." *Banks II*, 634 A.2d at 437. Thus, we have "jurisdiction to review and enjoin" the activities of nonlawyers which constitute practicing law in the District of Columbia. *In re Amalgamated Dev. Co.*, 375 A.2d 494, 498 (D.C. 1977); *see* D.C. App. R. 49 (a) (2002) ("No person shall engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the District of Columbia Bar, except as otherwise permitted by these Rules."); D.C. App. R. 49 (e)(2) ("Violations of the provisions of this Rule 49 shall be punishable by the Court of Appeals as contempt and/or subject to injunctive relief."). Despite this authority, Banks invokes a variety of constitutional principles to challenge nearly every aspect of the court's and the CUPL's assertion of jurisdiction over him since the mid-1980's. The primary objects of his attack, of course, are the order of civil contempt and injunction issued by Judge Levie in 1995 and the subsequent conviction of criminal contempt by the same judge in 1996. We find no reason to disturb either the civil or the criminal contempt determinations and hold that his challenge to the revocation of his probation is moot.

**A. The Civil Contempt 1.** By attacking the 1995 contempt order, Banks in reality challenges the provisions of Judge Gallagher's

1987 injunction. The main prohibitions of the 1995 injunction were already present in the 1987 injunction, such as the prohibition against use of (a) the term "'administrative law judge' . . . or any other similar term or description . . . reasonably denot[ing] that [Banks] is licensed to practice law in the District of Columbia"; and (b) any materials that do not expressly state that he "is 'not admitted to the practice of law in the District of Columbia or any other jurisdiction.'" The 1995 injunction did not substantively \5 The prohibitions contained in the 1987 injunction and supplemented by the 1995 injunction include, for example, paragraphs 6 and 7 which prohibit Banks from otherwise engaging in conduct calculated or intended to mislead, and paragraph 11 which prohibits him from "[o]therwise engaging in any manner in the practice of law in the District of Columbia . . . or in any conduct that holds respondent out as authorized or qualified to practice law in the District of Columbia." expand the 1987 injunction. It clarified its scope and added provisions to prohibit specific conduct Banks engaged in between 1987 and 1995 that already violated the more general prohibitions of the earlier injunction.5 Judge Levie found that the restrictions added in 1995 "are warranted to deal with [Banks'] conduct since the 1987 Injunction, *which conduct violates the 1987 Injunction*" (emphasis added). Banks' challenge to the civil contempt thus fails initially because he may not relitigate the propriety of the 1987 injunction. By denying *en banc* review, this court as a body declined to reconsider the correctness of Judge Gallagher's order, thus making *res judicata* all claims Banks then raised or could have raised in opposition to the order. *See, e.g., Watergate West, Inc. v. Barclays Bank, S.A.*, 759 A.2d 169, 179 (D.C. 2000). Moreover, the separate but related doctrine of collateral estoppel erects a similar bar. "Collateral estoppel, or issue preclusion, renders conclusive in the same or a subsequent action determination of an issue of fact or law when (1) the issue is actually litigated and (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; (4) under circumstances where the determination was essential to the judgment, and not merely dictum." *Davis v. Davis*, 663 A.2d 499, 501 (D.C. 1995) (citation and quotation marks omitted). Under these principles, Banks' manifold challenges to the civil contempt order, including his broad claim that this court and Judge Levie have unlawfully restricted his representation of clients before administrative agencies, come too late.

**2.** Even if the 1995 injunction were open to challenge, Banks has shown neither that Judge Levie lacked jurisdiction to enter it nor that he erred in the conduct of the civil contempt proceedings. Banks does not seriously question the sufficiency of the evidence establishing his repeated and flagrant violation of the terms of the 1987 injunction. Rather, as indicated, his main argument is that this court lacks jurisdiction to prevent him from representing clients before federal and District of Columbia administrative agencies. Banks misunderstands the limitations that have been imposed on his business. **(a)** With respect to federal agencies, neither the 1995 nor the 1987 injunction prevents Banks from appearing on behalf of persons before any federal agency that permits nonlawyer representation. Indeed, Judge Levie recognized that this court could not issue such a prohibition. *See Sperry v. Florida*, 373 U.S. 379, 385 (1963) (state law incompatible with federal law authorizing non-lawyer practice before federal agencies is preempted). Rather, by its terms and as explained by Judge Levie, the 1995 injunction merely precludes Banks from relying on Rule 49 of this court's rules — specifically Rule 49 (c)(4) as it existed in 1995 — as an independent and sufficient basis for practicing law before federal agencies. Banks has not claimed that he is registered to practice before any federal agency, or even that any of the federal agencies before which he wishes to practice have enacted regulations governing the practice of law by non-lawyers. *See In re Amalgamated Dev. Co.*, 375 A.2d at 497 (distinguishing *Sperry* and holding that "when a petitioner is not registered [to practice] in the [U.S.] Patent Office a state does not interfere with any federal purpose in subjecting the practitioner to its own licensing regulations and is free to do so"). 7 Of course, no federal statute, regulation, or order authorizes or condones false or misleading statements to prospective clients, and Banks makes no claim that any federal law or order authorizes any conduct prohibited by the 1995 (or 1987) injunction. Neither in its 1995 form nor in its present embodiment as Rule 49 (c)(2) is Rule 49's reference to practice before federal agencies an affirmative grant of authority to practice law. Instead, the language is just what it purports to be — an exception for conduct that otherwise would constitute the unauthorized practice of law. That exception is predicated (in both versions) on federal law or the federal agency itself having authorized an unlicensed person to practice before it.6 Thus, the restrictions on Banks' business are consistent with, and complementary to, the federal government's power to

authorize nonlawyers to practice before federal agencies. That power does not oblige this court to allow persons in the District of Columbia to provide false or misleading information about their authority to practice law in any context, including appearances before federal administrative or regulatory agencies. *See Sperry*, 373 U.S. at 403 (a state court "maintains control over the practice of law within its [jurisdiction] except to the limited extent necessary for the accomplishment of federal objectives").7 The 1995 injunction simply requires Banks to provide accurate information to prospective clients about his qualifications to practice before administrative agencies and prohibits him from providing information that is false or misleading in regard to his authority to practice law. In doing so, the injunction is well within the court's "'inherent and exclusive authority to define and regulate the practice of law in the District of Columbia.'" *Banks II*, 634 A.2d at 436 (quoting *Brookens*, 538 A.2d at 1125). **(b)** Banks further argues that the 1995 injunction unlawfully prohibits him from practicing before District of Columbia administrative agencies. The argument rests on the fact that, although Judge Levie stated he was not "address[ing] the issue of practice before District of Columbia agencies," paragraph 13 of the injunction prohibits Banks from "[o]therwise engaging *in any manner in the practice of law in the District of Columbia*" (emphasis added). And, although the then-current version of Rule 49 did not on its face encompass appearances before administrative agencies, *see* D.C. App. R. 49 (b) (1995), the rule now specifically defines the "practice of law" to include "[p]reparing any claims, demands, or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal," D.C. App. R. 49 (b)(2)(D) (2002). Banks' argument is unpersuasive. He has not demonstrated that the injunction barred him from practicing before District of Columbia agencies, rather than simply from misrepresenting his qualifications to practice before those agencies. Judge Levie did not purport to rule one way or the other on whether, or on what conditions, Banks c ould practice before local agencies as a non-lawyer. Furthermore, Banks has not alleged that in the two and a half years following the 1995 injunction, Judge Levie's order in fact operated to bar his administrative practice, *i.e.*, that any agency rebuffed his attempt to register 8 The United States informs us that Banks' probation expired on August 27, 2001. See Part B, *infra*, at p. 21. 9 Despite

Banks' protestations, this court's *Brookens* decision does not prevent the court or the CUPL from regulating non-lawyer conduct before local administrative agencies. In that case we determined that the District of Columbia Rental Accommodations Office did not act *ultra vires* in allowing nonmembers to represent a party at an administrative proceeding, explaining that former D.C. Code § 1-1509 (b) (2001) and its legislative history allowed for the possibility of lay representation before administrative agencies. 538 A.2d at 1127. Because Rule 49 at that time did not address practice before administrative agencies, we refrained from determining whether "in light of this court's inherent power to define and regulate the practice of law, a particular agency has the authority to adopt regulations permitting lay representation." *Id.* Declining to answer that question, we stated that, "[w]hile it is clear that this court is empowered to define the practice of law so that it either excludes or includes lay representation before agencies, it is also true that such an undertaking implicates important public policy questions," and we thus left the question to our court "in its administrative capacity." *Id.* The court later answered this question by including such practices within Rule 49. because of the injunction. That is significant because, from August 1997 through the end of his probation,8 his inability to practice before local administrative agencies stemmed from his own voluntary agreement, as a condition of renewed probation, to cease representing anyone before federal *or* District of Columbia agencies. As for his *future* ability to practice before local agencies as a non-lawyer, Banks' conduct will be governed by the current Rule 49 which, as an exception, permits a non-lawyer to "[p]rovid[e] legal services to members of the public solely before a department or agency of the District of Columbia government" so long as, among other things, "[s]uch representation is authorized by statute, or the department or agency has authorized it by rule and undertaken to regulate it." *See* D.C. App. R. 49 (c)(5) (2002). The 1995 injunction itself thus poses no barrier to Banks' practicing before local agencies that allow him to do so and regulate that practice.9 10 Even if Banks had possessed such a right, he waived it. when he failed to appear for the civil contempt hearing despite knowledge of the date, time, and place. *See* Super. Ct. Civ. R. 38-II. **3.** We now consider, and reject with only brief discussion, the array of additional challenges that Banks makes to the civil contempt order and injunction. *First*, he appears to argue he was denied the right to a jury trial (not differentiating

in this respect between the civil and criminal contempt adjudications). Neither the Constitution, *see Shillitani v. United States*, 384 U.S. 364, 370-71 (1966), nor any statute, *see* D.C. Code §§ 11-741 and 16-705 (2001), entitled him to a jury trial in a civil contempt proceeding.10 *Second*, Banks had no First Amendment right to engage in "commercial speech" calculated to deceive or mislead prospective clients by misrepresenting his qualifications. *See generally Wood v. United States*, 498 A.2d 1140, 1143 (D.C. 1985) (citing *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 566 (1980)). *Third*, regarding his claim that the CUPL selectively enforced the court's rule against unauthorized practice of law against him, he shows no instance in which the Committee has failed to pursue civil contempt against a person, assuming one exists, who persistently and flagrantly violated an injunction against unauthorized practice for over a decade. *Fourth*, his claims of invasion of privacy and defamation against individual members of the CUPL have no bearing on the validity of the 1995 injunction and are wholly unsubstantiated. In any event, they collide with the absolute immunity for damages conferred on the Committee and its members. *See Simons v. Bellinger*, 207 U.S. App. D.C. 24, 28, 643 F.2d 774, 778 (1980). *Fifth*, Banks' complaint that the CUPL presented to the D.C. Rental Housing Commission its views on proposed rules concerning practice by non-lawyers before that agency, besides again 11 Banks appears to argue that the injunctions, and perhaps the prosecution for criminal contempt, violated the Commerce Clause of the Constitution. Art. I, § 8, cl. 3. But the fact that he aspires to provide "nationwide service" does not exempt him from the commands of Rule 49. *See Leis v. Flynt*, 439 U.S. 438, 443 (1979) ("There is no right of federal origin that permits [out-of-state] lawyers to appear in state courts without meeting that State's bar admission requirements."). having no relation to the 1995 injunction, is baseless. The Committee's experience in policing unauthorized practice is plainly of value to an agency engaged in regulating practice before it. Nothing in its charter prohibited the CUPL from communicating those views.11 And *sixth*, his claim that this court unconstitutionally appointed Judge Levie to adjudicate the contempt proceeding in violation of U.S. Const. art. I, § 8, cl. 17, which concerns Congress's plenary authority over the District, is meritless. Judge Levie was assigned to preside over the contempt proceeding pursuant to D.C. Code § 11-707 (a), enacted by Congress in the exercise of its

constitutional authority. *See* District of Columbia Court Reorganization Act of 1970, § 11-707 (a), 84 Stat. 479-80, Pub. L. No. 91- 358, title I, ch. 7, subch. I.

**B. The Criminal Contempt**

Banks spends less time and energy attacking the criminal contempt conviction, but nonetheless sees it as somehow the poisoned fruit of this court's and the CUPL's
longstanding interference with his business of providing legal representation. His individual arguments have no merit. After being found in contempt for violating the court's 1995 injunction, Banks could not violate that order with impunity. "[W]e demand compliance with court orders —12 *See also In re Scott*, 517 A.2d 310, 312 (D.C. 1986) ("If the trial judge has jurisdiction over the subject matter and the parties before it, an individual has an obligation to comply with an order issued by the court or to seek to have the order vacated."). As previously explained, the court undeniably had jurisdiction over Banks and jurisdiction to
issue the 1995 injunction. subject to sanction for contempt — until they are reversed on appeal or otherwise are modified by motion . . . ." *Kammerman v. Kammerman*, 543 A.2d 794, 798-99 (D.C. 1988). "Even if we assume — solely for the sake of argument — that [the 1995 injunction was] invalid, appellant lawfully may be adjudged guilty of criminal contempt for failure to comply with it." *In re Marshall*, 445 A.2d 5, 7 (D.C. 1982); *see Walker v. City of Birmingham*, 388 U.S. 307, 320-21 (1967); *United States v. United Mine Workers*, 330 U.S. 258, 294 (1947) ("[U]ntil [the court's] decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision[s] are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.") (quoting *Howat v. Kansas*, 258 U.S. 181, 190 (1922)).12 Contrary to Banks' argument, therefore, Judge Levie was authorized to find him in criminal contempt for violating the 1995 injunction. This court, or a single judge thereof, may use the contempt power "to punish for disobedience of an order," D.C. Code § 11-741 (a), and (as pointed out) a judge of the Superior Court may be designated to serve as a judge of this Court. D.C. Code § 11-707 (a). Hence, we have "upheld . . . procedurally similar finding[s] of criminal contempt in which a single Superior Court judge, sitting by designation, sentenced a respondent" for violating an order of this court precluding him from practicing law in the District of Columbia. *In re Richardson*, 759 A.2d 649, 651 (D.C. 2000). *See also In re Burton*, 614 A.2d

46, 47 & n.1 (D.C. 1992). Although such contempt proceedings often are initiated by the CUPL, the fact that someone else (in this 13 Indeed, Judge Levie gave advance notice that he would impose no sentence on any one count exceeding six months' imprisonment or a fine of $1,000. *See* D.C. Code § 16-705 (b)(1). 14 We conduct our customary standard of review in these types of cases. *See Jones v. Harkness*, 709 A.2d 722, 723 (D.C. 1998) ("On appeal of a finding of criminal contempt, we must view the evidence in the light most favorable to sustaining the judgment.") (quoting *In re Vance*, 697 A.2d 42, 44 (D.C. 1997)). "The trial court's findings may not be disturbed unless they are without evidentiary support or plainly wrong." 709 A.2d at 723. case the United States Attorney) "initiated the request for a show cause order, and prosecuted the contempt charge at the court's behest, can have no effect upon the jurisdiction of the court to hold respondent in contempt." *Burton*, 614 A.2d at 49. *See also* D.C. App. R. 49 (d)(3)(E)(v) (2002), formerly 49 (e)(5)(d) ("The Committee may refer cases to the Office of the United States Attorney for investigation and possible prosecution."). Furthermore, Banks was not entitled to a jury trial of the criminal contempt. Judge Levie imposed concurrent sentences of 178 days for each of the five contempts, thus leaving the sentence below the jury-trial threshold established by either the Sixth Amendment or then D.C. Code § 16-705 (b)(1). *See In re Richardson*, 759 A.2d at 652; *Brookens*, 538 A.2d at 1122-23; *In re Evans*, 411 A.2d 984, 991-92 (D.C. 1980).13 The government also presented sufficient evidence to warrant a finding of criminal contempt.14 "A person who [willfully] disobeys a court order may be adjudicated in contempt." *In re Richardson*, 759 A.2d at 654 (citing *In re Kirk*, 413 A.2d 928, 930 (D.C. 1980) (per curium)). "[T]he offense of criminal contempt requires proof of a contemptuous act and a wrongful state of mind." *Mabry v. Demery*, 707 A.2d 49, 51 (D.C. 1998). "A contemptuous act may be conduct that interferes with the orderly administration of justice 15 Banks' ongoing dispute with court officials over preparation of the transcript of the criminal proceedings affords him no grounds for relief. In November 2001, the government successfully sought postponement of oral argument in this court to enable Banks to receive all relevant transcripts at public expense. Those transcripts were prepared and forwarded to Banks, and this court permitted supplemental briefing on the basis of them. We, therefore, consider these claims moot. 16 To the extent Banks argues that the

criminal contempt prosecution was the result of (continued...) or it may be 'disobedience or resistance' to court orders through actions committed outside the presence of the court." *Grant v. United States*, 734 A.2d 174, 176 (D.C. 1999). Counts One and Two concerned advertisements in the *Washington Post Magazine* in which, as Judge Levie found beyond a reasonable doubt, Banks had referred to himself as a former administrative law judge. As to Counts Three and Four, which dealt with an advertisement in the *Federal Times*, Judge Levie found that the advertisement contained a similar representation. And regarding Count Six, which concerned Banks' inducement of a Ms. Gudger to believe "she was being represented by an attorney," the judge found the witness's mistaken belief credible in the circumstances. In each of these instances Banks violated the injunction, and the evidence supports the judge's finding of willfulness.15 Banks also makes unfounded allegations that Judge Levie was biased against him. He does not proffer an "extrajudicial source" for the alleged bias, and it appears that his claim is based solely on the judge's handling of the court proceedings. But "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v.United States*, 510 U.S. 540, 555 (1994). "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*16 21 16(...continued) race- or gender-based discrimination, or a violation of equal protection, the arguments have no merit. A presumption of regularity supports prosecutorial decisions, *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (citation and internal quotation marks omitted), and Banks has not begun to make the showing necessary to dispel that presumption. *See id.* At 465; *Wayte v. United States*, 470 U.S. 598, 610 (1985); *Fedorov v. United States*, 600 A.2d 370, 377 (D.C. 1991) (en banc). Finally, Banks contests the revocation of his probation and Judge Levie's denial of his request for a sentence modification. These claims, however, are moot because Banks' probation expired on August 27, 2001, and he has long since served the twenty-one days of weekend incarceration Judge Levie ordered. *See Marshall v. District of Columbia*, 498 A.2d 190, 192 (D.C. 1985); *Smith v. United States*, 454 A.2d 1354, 1356 (D.C. 1983).

**C. Attorney's Fees 1. Background**

As pointed out, the 1995 civil contempt arose from a petition filed by the CUPL. Members of the Committee, primarily the Chair at the time, Stuart F. Pierson, then prosecuted the matter before Judge Levie. Following the hearing and contempt adjudication, the judge took up the CUPL's request for attorney's fees and costs associated with initiating, and litigating, the petition. Based upon his finding that Banks' "violations of the 1987 Injunction have been willful, intentional, repeated and flagrant," Judge Levie awarded Committee members partial but substantial attorney's fees and costs to be paid by Banks. Judge Levie limited the award to "efforts . . . spent directly on the instant [contempt] proceeding and the litigation related to it." He also noted that Banks, although given the opportunity, had not taken "issue with any of the specific fees or costs requested 17 Judge Levie noted that he had carefully considered "the amounts of time claimed and the quality of the products produced. For many months, the Court has been required to review memoranda submitted by the parties that is measured in feet or, perhaps, more accurately, in yards." He awarded $59,372.85 to attorney Pierson, $2,125.00 to Warren Fitch, and $2,500.00 to Linda Hoffman. by the CUP[L],"17 but challenged the authority of the court to award any fees to the CUPL or its members. When the matter came before this division, we ordered supplemental briefing on the propriety of an award of attorney's fees in this context. In making the award, Judge Levie had relied on *Link v. District of Columbia*, 650 A.2d 929 (D.C. 1994), which adopted and applied the principle that a civil "contemnor [may be ordered] to pay the aggrieved party's counsel fees [even] in the absence of a finding that the contemptuous conduct was willful." *Id.* at 930. In keeping with authority elsewhere, the court there held that "the remedial authority of a court of equity following a violation of that court's decree extends to the award of counsel fees occasioned by the contemnor's noncompliance." *Id.* at 932. In *Link*, however, the "aggrieved party" was a *private* litigant who had "been obliged to expend time and effort securing . . . her court-ordered rights" conferred by a settlement agreement between herself and the District of Columbia government. *Id.* In light of the differences between a private litigant and the CUPL, we asked the parties to address the following issue: What authority permitted the designated judge, after adjudicating appellant in civil contempt in 1995, to order him to pay the [attorney's fees] and costs of the Committee on Unauthorized Practice of Law and/or its members? *See, e.g.*, D.C. App. R. 49 (d) (2000) ("The court shall appoint a

standing committee known as the Committee on Unauthorized Practice of Law"); [*Simons*, 207 U.S. App. D.C. at 31, 643
23 18 Because Judge Levie relied on *Link* in assessing attorney's fees and costs, we do not consider whether the award could also have been made under the "bad faith" exception to the American Rule. *See Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 37 (D.C. 1979); *Alyeska Pipeline Co. v. Wilderness Soc'y*, 421 U.S. 240, 258-59 (1975). *See also Copeland v. Martinez*, 195 U.S. App. D.C. 399, 402-03, 603 F.2d 981, 984-85 (1979) (describing the punitive nature of fees awarded in this context). F.2d at 781] (describing the Committee members as "a bona fide arm of the Court of Appeals"); [207 U.S. App. D.C.] at 37, 643 F.2d at 787 (McKinnon, J., concurring) ("[T]he Committee members must be considered to be officers of the Court in carrying out their assigned responsibilities, . . . in . . . [a] capacity that [is] principally judicial.").

**2. Discussion** The issue before us is whether, upon adjudging a person in civil contempt for disobeying an injunction against the unauthorized practice of law, this court may order the person to pay attorney's fees of members of the court's own instrumentality, the CUPL.18 Banks argues that the issue implicates his due process right to "an impartial and disinterested tribunal in both civil and criminal cases," *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980), by asking whether the court, in effect, may fund activities of its own regulators from the pockets of persons haled before it on charges of unauthorized practice of law. At a minimum, he says, the question is whether such court-ordered reimbursement to "itself" creates "an appearance of bias or prejudice [in favor of finding contempt] sufficient to permit the average citizen reasonably to question the [court's] impartiality." *York v. United States*, 785 A.2d 651, 655 (D.C. 2001) (citing the CODE OF JUDICIAL CONDUCT FOR THE DISTRICT OF COLUMBIA COURTS, Canon 3 (1995)). Answering these questions requires us to distinguish between two roles the CUPL performs. The Committee, made up of volunteer members of the Bar and one non-member, was established by the court to carry out the provisions of Rule 49 prohibiting unauthorized practice. *See* D.C. App. R. 49 (d). By far, most of the Committee's work consists of investigating complaints of unauthorized practice of law and, in the first place, deciding whether to hold "formal proceedings" on the matter, and then conducting those proceedings if warranted. D.C. App. R. 49 (d)(3)(C) & (D). Such

proceedings are akin to a trial in that, represented by counsel, the respondent may testify and, with leave of the committee, call witnesses and conduct limited cross-examination, although formal rules of evidence do not apply. D.C. App. R. 49 (d)(3)(D)(iii). Thereafter the Committee makes findings and may take one of several actions, including a "formal agreement, consent order, or both" if the respondent agrees to "cease and desist" from actions appearing to be unauthorized practice. It may also require restitution to the clients of fees obtained by the respondent. D.C. App. R. 49 (d)(3)(E)(iii). As a last step, but only on completion of formal proceedings, it may initiate proceedings in this court to enforce Rule 49 and may refer cases to the executive branch for possible criminal prosecution. D.C. App. R. 49 (d)(3)(E)(iv) & (v). When acting in this capacity, it has been correctly said that "[t]he Committee members' work is functionally comparable to the work of judges," as they "perform a function which traditionally belongs to the judiciary." *Simons*, 207 U.S. App. D.C. at 30, 643 F.2d at 780; *see also* 207 U.S. App. D.C. at 37, 643 F.2d at 787 (MacKinnon, J., concurring). "Indeed, were it not for the Committee, judges themselves might be forced to engage in the sort of inquiries which [the Committee conducts]." 207 U.S. App. D.C. at 31, 643 F.2d at 781. In our view, an assessment of attorney's fees against a contemnor for 19 "The members of the Committee shall receive such compensation . . . as the court may approve." Rule 49 (d)(2). Historically, however, CUPL members have volunteered their time as a matter of public service and have not been compensated for the work. 20 Indeed, the CUPL, in petitioning for civil contempt, was a step removed from the role it performs in initiating "an original proceeding before the Court of Appeals for violation of (continued...) work done by CUPL members in formal proceedings that led to a contempt petition would pose an unacceptable risk to the appearance of impartiality by the Committee in conducting its "near-judicial . . . work." *Id.* Strictly — but importantly — as a matter of appearance, members could be reasonably thought to have an incentive "not to hold the balance nice, clear and true," *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972) (quoting *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)), by pursuing enforcement proceedings to recoup some of the cost of their time and efforts. And that is so even though, in theory if not in practice, the members may be compensated by the court out of its own funds. *See* D.C. App. R. 49 (d)(2).19 In evident recognition of this appearance of conflicting interests, the

CUPL did not request, and was not awarded, fees for informal or formal proceedings it had conducted in regard to Banks, and Judge Levie awarded the members fees only for efforts spent "directly on the instant [contempt] proceeding and the litigation related to it." In instituting and litigating the civil contempt proceedings, by contrast, the CUPL acted in what amounted to a prosecutorial capacity, for in that role its members "[were] not a judge. [They] perform[ed] no judicial or quasi-judicial functions. [They] hear[d] no witnesses and rule[d] on no disputed factual or legal questions." *Marshall,* 446 U.S. at 247. In effect, they were the "special counsel" which the court may appoint under Rule 49 (e)(1)(B) "to represent the Committee and to present the Committee's proof and argument."20 Of persons acting in that kind of role the Supreme Court has stated: "The 20(...continued) . . . Rule 49." D.C. App. R. 49 (e)(1)(A). In seeking a contempt order for noncompliance with the 1987 injunction, the CUPL more resembled any citizen aggrieved by Banks' continued unauthorized practice, such as a licensed practitioner competing to represent the same class of clients, and thus entitled to seek enforcement of a court order through contempt. Strictly speaking, therefore, any issue of the propriety of an award of fees to CUPL members for work done in Rule 49 (e)(1)(A) proceedings is not before us. rigid [conflict] requirements of *Tumey* and *Ward*, designed for officials performing judicial or quasi-judicial functions, are not applicable to those acting in a prosecutorial or plaintiff like capacity." *Marshall*, 446 U.S. at 248. Any perceived incentive the CUPL might have to initiate a civil contempt proceeding to earn attorney's fees in *that* proceeding is vanishingly — indeed, absurdly — small. Beyond the fact that the great bulk of the members' time relates to the CUPL's own proceedings (uncompensated in practice), it is frivolous to suggest that the members *need* the litigation of a civil contempt proceeding and the prospect of a fee award from a contemnor to supplement their income as lawyers. Consequently, the only issue we need consider is whether the *court itself*, as an appearance matter, can be said to be biased in favor of contempt and a resultant fee award to allow it to defray costs that, at least in some cases, the court might otherwise expend. *See* D.C. App. R. 49 (d)(2). Here also, however, "the influence alleged to impose bias" is, in our view, too "remote" to be cognizable. *Marshall*, 446 U.S. at 250. As pointed out, the court has authority to compensate Committee members but is not obligated do so. See note 19, *supra.*

Additionally, we may judicially note that in the relative handful of cases brought to the court in the past on petitions for civil contempt, we apparently have not been asked to compensate, and have not compensated, the Committee's counsel; nor have attorney's fees been ordered — or, to our knowledge, asked to be ordered — to be paid by the contemnor to the CUPL. In this respect as in others, Banks' case is *sui generis*: the CUPL's request for fees stemmed both from the flagrancy of his contempt for the past injunction and from his proclivity to compound the court proceedings — each time requiring a response from the Committee — resulting in a record that Judge Levie measured "perhaps . . . in yards." By contrast, any perceived incentive in the run of contempt cases for the court or its designated judge to shift attorney's fees to the contemnor is, we think, negligible to nonexistent. Furthermore, although Banks' case is remarkable because of the size of the attorney's fees awarded (approximately $64,000.00 in the aggregate), that sum remains a negligible portion of the court's total budget and so fails to create "a realistic possibility that the [court's] judgment will be distorted" by a desire to shift its own (discretionary) financial burden to the shoulders of the contemnor. *Marshall*, 446 U.S. at 250. All told, we discern no conflict of interest or appearance thereof sufficient to prohibit an award of attorney's fees to the CUPL in the circumstances of this case. *Affirmed.*

IN THE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
In Re Simon Banks (1992)
D.C.C.A. No. 97-BG-652
ORDER #18
(January 13,1995)

Procedural History

This proceeding was initiated by the District of Columbia Court of Appeals Committee on the Unauthorized Practice of Law ("Petitioner", "Committee" or "CUP") through the filing of a petition in the District of Columbia Court of Appeals to hold Simon Basks ("Respondent") in civil contempt and for other relief for alleged violations of the 1987 Injunctive Order (the "1987 Injunction"), which prohibited certain conduct of Respondent. In response to the CUP's petition, the Court of Appeals required Mr. Banks to show cause why he should sot be held in contempt.

Following Respondent's responses to the order to show cause, the Court of Appeals designated the undersigned to hear the matter of alleged violations of the 1987 Injunction. The 1987 Injunction

To appreciate the instant proceeding, it is necessary to review some of the history of Mr. Banks' relationship with the CUP. In response to complaints. filed against Respondent, the District of Columbia Court of Appeals designated one of its Senior Judges, the Honorable George R. Gallagher, to preside .over a contempt proceeding brought against Respondent- .After hearing testimony and argument, Judge Gallagher issued findings of fact, conclusions of late- and an injunctive order on November 23, 1987. In re Banks. 561 A.2d 158 (D.C. 1989).

1/ Judge Gallagher found that it was undisputed that Mr. Banks graduated from law school in 1975, but had not been admitted to any Bar. Id. at 159). Also undisputed was the fact that Respondent "held the position of hearing examiner at the District of Columbia *Office of* Human Rights from 1975-1976 and, later, at the District of Columbia Rental Accommodation Office." (Id. Based upon the evidence presented, Judge Gallagher found that: From September of 1985 until the date of the hearing in this case, respondent, who is not now and never has been. an active member of the District of Columbia Bar, has engaged in a continuous course of conduct designed to create the public and individual misimpression that he has been duly qualified to practice law in the District of Columbia. Such misimpression has been generated and fostered by respondent through various media, including advertisements in the yellow pages, newspapers, and on the radio, and representations made in resumes, business cards, stationery, and other verbal and written descriptions of his business. Id. at 163). Judge Gallagher also found that tams used by Respondent to describe himself and his business, as well as documents used by Respondent in 1/Although the injunction was issued on November 23, 1987, it was not published and reported until 1989.

his business, would lead members of the public to believe that Respondent was a member of the Bar.(Id.) 2/ Based upon the evidence presented, the Court (per Gallagher, J.) issued a permanent injunction, entitled "Judgment and Order", which, is pertinent part, ordered. that [Mr. Banks] is hereby permanently enjoined and restrained specifically from: (1) Representing nay person, other than himself, or any corporation, association, partnership, organization, or other entity in any court is the District of Columbia unless he is a member of the bar of the coati in which

such representation takes place; (2) Using such terms to describe himself or his qualifications as . . . "Esquire," "advocate," or any abbreviation of the foregoing toms, or any other term or description which reasonably denotes that [Mr. Banks) is licensed to practice law in the District of Columbia; (3) Using such tams to describe himself or his qualifications as "administrative law judge," "administrative trial advocate," any abbreviation of the foregoing terms, or any other similarly term or description also which reasonably denotes that (Mr. Banks') forma employment as a hearing examiner constitutes a qualification or license to practice law in the District of Columbia; (4) Using any advertising materials, business cards .... stationery, . . . or nay other business documents relating to representation of individuals before administrative agencies or 2/Judge Gallagher also found that Respondent had violated a 1985 Settlement Agreement between Respondent and the CUP which covered conduct that was the subject of and basis for the 1987 Injunction. Banks, supra, 561 A.2d at 159 n3, 167-69. courts in this jurisdiction which do not expressly state in a separate paragraph and in one complete sentence [footnote omitted] at the outset of the document that respondent is -"not admitted to the practice of law in the District of Columbia *or any other* jurisdiction" (6) Otherwise engaging in verbal or conduct which is calculated to mislead the public into concluding that [Mr. Banks] is licensed to practice law in the District of Columbia; (7) Otherwise engaging in verbal *or written* conduct which is intended to mislead the public into concluding that respondent maintains an office *for* the practice of law in the District of Columbia; (9) Preparing any contract . . . or preparation of any legal opinion; (10) Preparing or expressing formal opinions or consulting with respect to any of the items enumerated in paragraphs (7) and (8) of this Order, or on any other matters of law; and (11) Otherwise engaging in any manna in the practice of law in the District of Columbia, as that term is defined in [Rule 49], or in any conduct that holds [Mr. Banks] out as authorized or qualified to practice law in the District of Columbia, or in any other conduct prohibited by [Rule 49]. Banks, supra, 561 A.2d at 168-169. 3/Hereinafter "the required statement".

The 1994 Hearing

A hearing to show cause why Respondent should not be held in contempt for violating the 1987 Injunction ("the Hearing") was held on May 9, 1994 4/ Respondent failed to attend the Hearing. Before proceeding with the Hearing,

however, the Court found that Respondent was aware of the date, time and place of the Hearing. There is no doubt that Respondent was well aware of the date and time for the Hearing. On March 8, 1994, during a telephone conference call with Respondent and counsel for Petitioner, the date and time of May 9, 1994 at 930 a.m. were agreed upon for the Hearing. (May 9 Tr. at 3). The Court then issued Order # 12, dated April 5, 1994, confirming that date and time. Thereafter, in an Emergency Motion to Stay the Hearing, filed ' by Respondent on May 9, 1994, he indicated in his "wherefore clause" the date and time of the Hearing as May 9, 1994 at 930 a.m. On May 9, the Court waited 45 minutes before commencing the Hearing. During that time, several attempts to locate Respondent were made. Specifically, he was paged twice over the Courthouse paging system, a message was left at Respondent's office, several calls were made to the Court of 4/The commencement of the Hearing was delayed Respondent's attempt to remove the contempt proceeding to the United States District Court for the District of Columbia. Appeals, where he was seen earlier that morning. Calls also were made to the office of the CUP (Id. at 4). All attempts to locate Respondent were unsuccessful. During the Hearing, at approximately 1130 a.m., Respondent called the Court's chambers asking for a stay of the Hearing until he arrived. Although he was originally told that there would be no stay, Respondent's *office was* called back almost immediately and told that the Court would wait for 20 minutes to enable Respondent to arrive. The Court then declared a recess. After waiting more than 20 minutes without Respondent arriving, the Hearing resumed. (Id. at 56). At the hearing, the CUP presented eleven witnesses: Maria L. Johnson, Esq., Lovie L. Robinson, Vivian Reese, Carl D. McAllister, Cassandra Webb, Brenda Berkley, Jane Harris, Sonja B. Hall, Laverne King, Irene Walker and Donna Wyatt.5/ In addition, CUP exhibits *1-41* were admitted into evidence as a result of Respondent's failure to respond to the CUP's Second Request for 5/The Court declined to consider some evidence because of inadequate foundation. (May 9 Tr. at 129, 139). Admissions. 6/ Other exhibits were admitted into evidence, once the proper evidentiary foundation was laid.7/ Subsequent to the **Hearing, Petitioner filed** proposed Findings of Fact and Conclusions of Law. The Court granted Respondent until June 7, 1994 to respond to Petitioner's submission. (Order # 14, dated May 9, 1994.8/ Respondent filed numerous documents, including Motions to Strike Testimony, Exhibits, Admissions and

Affidavits and a Statement of Objections. Analysis of the Evidence Presented at the 1994 Hearing

***Second Requests for Admissions (SRFA)9/***

Respondent is not admitted to practice law in the District of Columbia, *any* of the fifty states or *any of* the Courts *of* the United States. (SRFA¶ 1). At 6/ For reasons set forth in this Court's Order #3, dated December 2, 1993, the Court deemed as ***admitted the*** admissions contained in the .CUP 's Second Request for Admissions, due to Respondent's failure to respond to such request. 7/ The ***following exhibits*** were admitted into evidence during the May 9 Hearing: Exh. 47 (May 9 Tr. at 57-64); *Exh. 49 (Id_. at 42); **Exh. 51-52 ad at*** 13-15); Exh. 56-62[sic] Id. at 26, 28, 31, 32, 33, 37, 39); Exh. 81 (Id. at 95) and Exh. 82 (Id. *at* 125). Some exhibits were rejected by the Court due to inadequate foundation. [Exh. 53 (Id., at 18-19); Exh. 63 (Id at 41)].

8/Respondent requested and received an enlargement of time in *which to* file his response. (Order #15, dated June 6, 1994).

9/ The Second Requests for Admission were deemed admitted, pursuant to Order #3, dated December 2, 1993. The time of the Hearing. Respondent did not have an application pending for admission to the District of Columbia Bar. Id. ¶2).10/ Respondent continues to conduct business in the firm name of "Job protectors", and, from November 23, 1987, until he moved in about 1992, he did so at the same telephone number and the same ***address*** set ***forth in*** the 1987 Injunction. Id. at ¶ 3). Respondent maintains ***an office*** at 468 M ***Street, S.W"*** Washington, D.C.; he also maintains a post box at P. O. Box 65486, One Washington Square Building, Washington, D.C. (Id. at ¶ 4). . Respondent continues to use such terms as "Esquire", "advocate", "administrative law judge" and other tams which were expressly prohibited by the 1987 Injunction.11/" (Id. at ¶ 5)

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10/ In an October 12, 1994 filing, Respondent stated that he "has secured from the Secretary of Committee on Admissions, an application for the February, 1995 Bar Exam. Banks shall sit and take the District of Columbia Bar Exam scheduled for February, 1995." 11/ Independent of the Second Requests for Admissions, there was evidence adduced regarding Respondent's violation of the 1987 Injunction. For example, in d Grievance Complaint and a Petition for Review filed by Respondent on behalf of a customer, the signature lines read "Dr. Simon Banks, Esq., Former Administrative Law Judge". (May 9 Exh. 4, 33). In an

Authorization of Representation form, Respondent referred to himself as "Judge Simon Banks, Esquire". (Id. Exh. 1). In a Response to a Letter of Admonition, Respondent used the phrases "Administrative Hearing Advocates" and "Former Administrative Law Judges". Id. Exh. 2). The signature line reads "Dr. Simon Banks, Esq, Former Administrative Law Judge." (Id.)

Although not raised at the Hearing, the Court takes judicial notice of an exhibit to a counterclaim filed by Respondent in the case of Dr. Simon Banks.(continued...) Respondent uses advertising materials, stationery another business documents which use terms prohibited by the 1987 Injunction and which do not "expressly state in a separate paragraph and in one complete sentence (footnote omitted] at the outset of the document that he is `not admitted to the practice of law in the District of Columbia or any other jurisdiction.'" (Id at ¶. 6)12/

In August 1992, Respondent told the General Counsel of the District of *Columbia Office of* Employee Appeals, in words or substance the following: a. that the [1987] Injunction was legally invalid and non-existent; authority to tell him what to do;

b. that the District of Columbia Court of Appeals has no 11/(...continued) t/a Job Protectors v. Armstrong SC 11133-94. The exhibit included a letter, dated April 7, 1994, that Respondent sent to the EEOC on behalf of one of his clients; in the exhibit he signed his name' as "Simon Banks, *J.D.*, Esq." The timing of this letter, clearly violating the 1987 Injunction, is indicative of Respondent's continuing disregard of the 1987 Injunction relating to the prohibition of use of the term "Esq." He committed this violation only one month before his scheduled contempt hearing on allegations of violating the ': 1987 Injunction.

12/ Again, as will be established infra. evidence produced at the Hearing, independent of the SRFA, established violations of the 1987 Injunction. For example, Respondent's Retainer Agent does not contain this required statement (May 9 Exh. 21, 36). Respondent's business card contains the phrase "Forma Administrative Law Judge". (Ids Exh. 16). An advertisement in the Federal Times. 'dated Mar. 9, 1992, uses the phrases "Former Hearing Administrative Law Judges" and "Specialist in Employment Law". (Id. Exh. 25; May 9 Exh. 34, 43 at ¶ 6).

c. that he has not ***altered his conduct*** in any way since the Injunction, and has no intention of doing so; d. that he has openly violated the Injunction for years; e. that he intends to continue to use such terms as "squire", even *though they were prohibited by*

the Injunction; and the District of Columbia Court of Appeals takes no action against him because it )mows the Injunction is invalid. Id. at 7). Testimony Presented at the May 9 Hearing

Sonia B. Hall Ms. Sonja B. Hall testified that she thought Mr. Banks was an attorney when she met with him to seek representation for alleged harassment she was experiencing at her job. She stated that Respondent told her that he was an attorney. (May 9 Tr. at 88). Ms. Hall also testified that Respondent had a license on his wall which indicated he was an attorney. Id. at 89).

Although Respondent promised to help Ms. Hall with her claim, any filings he made on her behalf were at the wrong agency. (Id. at 87; 89). Ms. Hall signed a "Retainer Agreement", dated April 12, 1990, on printed "Job Protectors" stationery. The stationery used such terms as "Administrative Hearing Advocates", "Hearing Examiners", "Advocates", "Representation by Former Administrative Law Judges" and "Nationwide Representation". (May 9 Exh. 21). This Retainer Agreement does not include the Disclaimer required by the 1987 Injunction. W Ms. Hall also signed a "Privacy Release", dated April 13, 1990. Id. Exh. 22). It is printed on the same stationery and, likewise, it does not contain the required Disclaimer. A "Receipt" dated April 13, 1990, signed by NIL Hall and Respondent, is printed on the same stationery; the Disclaimer does not appear. (Id. Exh. 23). Finally, Ms. Hall signed a required "Notice of Representation", which is printed on the same stationery and does not contain the required statement. (Id., Exh. 24).

Jane **Harris** Ms. Jane Harris testified that she learned of Respondent from an advertisement in the Federal- Times. which stated that he was an administrative law judge. (May 9 Tr. at 100-10I). She identified Exhibit 41 as the advertisement (May 9 Tr. at 101; Exh. 41). Because of the contents of the advertisement, Respondent's statement that he was a former administrative law judge, the environment of Respondent's office (the presence of law books in his office) and what Respondent told her, Ms. Harris believed he was a licensed lawyer. (May 9 Tr. at 101).

Ms. Harris asked Respondent to help her concerning a problem with promotion at a federal agency. When the promised assistance did not materialize, Ms. Harris terminated her relationship with Respondent and demanded her money back. Id. at 104). After going to a local television station about the matter, and after more time had passed, Respondent returned $1,000 of the $1,100 paid to

him by Ms. Harris. Id. at 105). He did not return her files, which she requested. (Id. at 105).

LaVerne King

Ms. LaVerne King testified that she heard of Respondent from a radio advertisement (May 9 Tr. at 107). At her initial consultation with Respondent, he informed her that he was an administrative law judge and that he had handled many kinds of cases. (Id. at 108). During that meeting, she told him that she needed an attorney who was familiar with D.C. personnel actions, and asked him whether he handled that kind of case. Id. at 109-110). Ms. King testified that Respondent never told her that he was not licensed to practice law in the District of Columbia. Id. at 110).

Ms. King signed an agreement *retaining Respondent* to represent her. This agreement did not contain the required disclosure statement, and it used the phrase "Former Administrative Law Judges". (May 9 Exh. 39). Ms. King Provided Respondent with all of the relevant documents in her possession, including a letter of admonition, dated March 9, 1992. As discussed at the consultation, Respondent agreed to respond to this letter of admonition in the prescribed time and to file a grievance on a harassment claim. Ms. King prepared a draft of the response to the letter of admonition. (May 9 Tr. at 108109).

Respondent submitted a letter responding to the wrong letter of admonition, and failed to file a timely grievance. Ms. King thereby lost her opportunity to contest *the* admonition. Respondent would not respond promptly to Ms. King's attempts to contact him by telephone and in person. Id. at 111-113) Ms. King has demanded her money back, but has not received a response or a refund from Respondent. (Id. at 114).

Brenda Berkley

Ms. Brenda Berkley testified that she and her husband met with Respondent to seek his assistance with an employment matte. (May 9 Tr. at 92-93). Ms. Berkley testified that, after that fast meeting, she believed Respondent was an attorney. *(7d.* at 96). She stated that Respondent hung degrees and other things on his office wall so that he "looked like he was really a lawyer." (Id. At 96). Respondent told Ms. Berkley to go to court so that she could see him in action. *Id.* at 96-97). In 1992 Respondent gave Ms. Berkley and her husband an article in the American Weekly entitled "Job Protectors: On the Job for You", and asked them to distribute the

document to others. This "article" is actually a promotional advertisement, having the following notable features:
a. It twice refers to Respondent as a former administrative law judge, and refers to former positions he held with the D.C. government, positions which the 1987 Injunction held to be only hearing *officer* positions, not positions of administrative law judge. See Banks. supra. 561 A.2d at 165. b. It repeatedly states that Job Protectors provides "legal representation". "c. It states that Job Protectors has a complete library of federal and state laws governing employment rights, benefits and privileges.
d. It states: Job Protectors was established with the knowledge that there are very few legal firms that afford victims of employment discrimination or violation of employment rights, a reasonable opportunity to litigate their cases with competent legal representation. e. It states that Job Protectors handles cases involving discrimination sad violation of collective bargaining agreements. f. It pictures Respondent sitting in front of a bookcase of law books. It does not include any disclaims or qualifying expression indicating that Respondent is not admitted to any bar, or that he is not authorized to take cases to court.
Cassandra Webb Ms. Cassandra Webb testified at the hearing that she met Respondent at his office is 1991. At that meeting, be told her that he was a "former administrative law judge". (May 9 Tr. at 80). Her impression that Respondent was an attorney was reinforced by pictures on Respondent's wall of himself with Thurgood Marshall, Walter Fauntroy and Jimmy Carter, and by his statement that he had repress people involved is the Watergate nerd BCC1 Id. 81). He never told he he was not a licensed lawyer. Id. at 84). Respondent advised Ms. Webb that her case was open and shut, and that it would be resolved is 60-90 days. Yet, Ms. Webb testified that Respondent did nothing for the $1,000 she paid him. Id. at 83). Maria Johnson

Ms. Maria L. Johnson. Esq, the Chief Administrative Law Judge of the Temporary Appeals Panel of the District of Columbia Office of Employee. Appeals, testified that she was concerned about the quality of services being provided by Respondent to complainants involved with her agency. (May 9 Tr. at 12-13).
Ms. Johnson indicated that Respondent regularly used the term "Esq." when filing papers at the Temporary Appeals Panel ad. at 13). In a document filed , by Respondent at the Temporary Appeals Panel, the signature line reads. "Dr. Simon Banks, Esq." (May 9 Exh. 52). By letter of May 8, 1992, Ms. Johnson advised

Respondent that he, should not use the term "Esq.", after his name in consideration of the 1987 Injunction. (May 9 Tr. at 13; Exh. 51). Louie Robinson

Ms. Louie L. Robinson testified at the hearing that she believed ' Respondent was an attorney. (May 9 Tr. at 25). She stated that, at their first meeting, he told her about other cases on which he had worked, and stated that one case he was presently handling involved the "Iran Contra people". (Id. At 24). Ms. Robinson stated that she told Respondent she needed an attorney, and that he never told her he was not a lawyer. (Id. at 25). Respondent told Ms. Robinson that she had wasted time by not meeting with an attorney earlier. (Id at 34-35).

Ms. Robinson signed a Retainer Agreement, Disclosure Statement and Designation of Representative, presented to her by Respondent She testified that she signed them several weeks after her first meeting, at which she retained Respondent; at his instruction, she backdated the papers to February 3, 1993. Id. at 34). Ms. Robinson also testified that, after ha first visit to Respondent's offices, a sign was hung on the outside door which stated "Dr. Simon Banks, Former Administrative Judge". (May 9 Tr. at 41; Exh. 49).

Neither the Designation of Representation nor the Retainer Agreement contained the required disclaimer. (May 9 Exh. 58, 60). While the Retainer Agreement did state that "Dr. Simon Banks/Job Protectors Former Administrative Law Judges, will not provide any representation for me or on my behalf before any court," the phrase did not indicate that Respondent: was not licensed to provide representation in a court of law. (May 9 Exh. 58 ). Moreover, it violated the 1987 Injunction because Respondent referred to himself as "former administrative law judge". (Id.) The Disclosure Statement contained the required statement (May 9 Exh. 59). Nevertheless, it violated the 1987 Injunction because it contained the phrases "administrative law judge", "hearing judge" and "judge". (Id.) In the document, Respondent described the duties he chimed to have undertaken while a "Judge". Respondent stated that he conducted quasi-judicial hearings, made quasi-judicial and evidentiary rulings, and sustained and overruled objections and motions.

Vivian Reese

Ms. Vivian Reese testified that she contacted Respondent after hearing his radio advertisement, *is which* he offered representation by. "former administrative law judges". (May 9 Tr.

at 46). Ms. Reese stated that she believed he was a licensed attorney because of his use of the term "former administrative law judge" in the radio ad, sad bye Respondent told ha that if they were not successful in the EEOC proceedings, that he would take her case to court. (Id. at 53). Ms. Reese testified that Respondent's statements to her were "just like any attorney would say." (Id.)

Ms. Reese received and signed three documents relating to her representation by Respondent: Receipt far Consultant Services, Receipt for Consultation Fee and a complaint filed on her behalf (May 9 Tr. at 57, 60, 61; Exh. 47). Neither the Receipt for Consultant Services nor the Receipt for Consultation Fee contained the required disclaimer. (Id. Exh. 47). Both documents contained the phrases "former administrative law judges" and "administrative hearing advocates". (Id.) The Receipt for Consultant Services also staled that Respondent and his firm are "legal consultants". (Id.)

The cover letter accompanying the complaint filed on Ms. Reese's behalf was signed "Dr. Simon Banks. Esq". (Id.)

Carl McAllister

Mr. Carl McAllister testified that he believed Respondent was a practicing attorney. (May 9 Tr. at 68, 73). According to Mr. McAllister, Respondent told him that he would take Mr. McAllister's case to court. ad. at 68). Respondent also told Mr. McAllister that he was a "law judge". (Id. at 68). Mr. McAllister testified that Respondent never told him that he was not an attorney. (Id.) Finally, Mr. McAllister stated that when he called Respondent's office, he was informed by the person who answered the telephone that Respondent was in court (Id. at 73-74).

Irene Walker

Ms. Irene Walker testified that, on her first visit to Respondent's office, she saw a brass plate on the outside door which read "former administrative law judge". (May 9 Tr. at 117). Based upon this, Ms. Walker stated that she believed he was a licensed attorney. (Id. at 117).

Ms. Walker also testified that Respondent told her he could represent her in agencies and courts, and that he was currently handling a court case in Detroit. (Id. at 118). Respondent told her that they would initially take her case *to the Human Rights Commission,* and, if unsuccessful, they would go to court. *(Id. at 119).*

Donna Wyatt

Ms. Donna Wyatt testified that *statements* made to her by Respondent, specifically that he was an ex-administrative law judge, led her to believe that
he was an attorney. (May 9 *Tr.* at 134). Ms. Wyatt stated that I know you have to go to law school to be a lawyer, and from there you go to be a judge . . . ." (Id.) In addition, Ms. 'Wyatt testified that Respondent told her about his other cases and about comments he would make to judges, which also led her believe that he was an attorney. (Id. at 135). Ms. Wyatt further stated that she believed Respondent's office looked like a lawyer's *office, because* he had what looked like a lot of legal papers, law books and pictures of himself with Jesse Jackson and Thurgood Marshall. (Id. at 133). Respondent's Response. Although not appearing at the May 9 Hearing, Respondent has filed numerous motions concerning the Hearing and persons involved in the Hearing. Respondent's Motion to Strike Testimony. First, Respondent contended that this Court was without jurisdiction to convene the Hearing because the cast was removed and an appeal of the Remand Order was pending. Respondent asserted that he is entitled to appeal the Remand Order because his Removal Pardon was based upon 28 U.S.C. § 1443. The mere filing of a notice of appeal, however, does not by itself "oust the state court of jurisdiction to proceed with the trial." Dorsey v. State. 171 Ind. App. 408, 375 NY-2d 280, 283 (1977). ***The party*** wishing to appeal the remand order must ***file a motion to stay the proceedings*** in the state court.

Respondent filed an Emergency Motion *to* Stay almost four months after the Remand Order was issued, which Emergency Motion was denied by this Court. Respondent's allegation that this Court was without jurisdiction when it held the Hearing is, therefore, without merit. .

Second, Respondent alleges that because Petitioner and Stuart Pierson13/ engaged in witness tampering and subornation of perjury, the testimony of all twelve witness at the hearing should be stricken.14/ To say that Respondent 13/ the elements of each crime can -serve as a guideline for analyzing Respondent's Stuart Pierson is the Chair of the Committee-- on Unauthorized Practice of Law. 14/ The Court notes that neither Mr. Pierson nor any other pa: party is this case has been charged criminally with obstructing justice, or with subornation of perjury. Nonetheless, allegations. Witness tampering is known as the criminal offense of "obstruction of justice", Smith v. United States. 591 A.2d 229, 230

D.C. 1991). and is codified at D.C. Code § 22-722(a)(l) (1989). To be found guilty of this offense, a peon must endeavor to influence, corruptly or by threats of force, any witness in a court of the District of Columbia in the discharge of his or her duties. D.C. Code §, 22-722(a)(1).

Subornation of perjury is also a criminal offense. D.C. Code § 22-2512 (1989). In the District of Columbia, the crime of subornation of perjury must be proven by the "two witness" rule. Jenkins v. United States. 500 A.2d 1019, 1021 (D.C. 1985). - Both the fact of subornation and the perjury by the witness must be proven. Id. The subornation can be proven by one witness' testimony, but the perjury must be proven by two witness' testimony, or the testimony of a single witness with corroborating evidence. Id. (continued...) has failed to produce evidence to support this allegation would be an understatement. Respondent contends that, through a letter written by Mr. Pierson, to C. Roger Cooper, a former client of Respondent. Mr. Pierson suggested to each *witness* scheduled to *testify at the* Hearing, and to any prospective witness, that they should testify that they believed, notwithstanding the Disclosure Statement executed by each of them, that Respondent was an attorney. (Simon Banks' Response to Argument of Committee, Statement of Objections and Motions to Strike at 2 ("Objections")).15/ A copy of Mr. Pierson's letter to Mr. Cooper is attached as Exhibit 1 to Simon Banks' Response to Statement of Stuart Pierson that He Did Not Tampa With the Witnesses Whom Testified at the May 9, 1994 Contempt Proceedings ("Response"). According to the text of the letter, dated December 8, 1993, its purpose was to inform Mr. Cooper of a decision by the District of Columbia Court of Appeals in Banks v. District of Columbia Department of Consumer and Regulatory Affairs. 634 A2d 433 (D *C.* 1993). (Resp. Exit. 1). In the letter, 14/ (...continued) Examination of the elements of these offenses, compared with the "evidence" offered by Respondent, demonstrates the hollowness and lack of merit, of Respondent's allegations. 15/Although Respondent alleges that the letter suggested to each witness scheduled to testify and any other prospective witnesses what their testimony should include, them is no evidence that any other witnesses received a copy of the letter. Mr. Pierson explained that, pursuant to this derision, persons who paid money to Respondent while believing he *was the* functional equivalent of as attorney could cover that money if the services were not rendered. (Id.) Mr. Pierson specifically stated that "(t)his

[letter] does not relate to the *contempt* proceeding against Mr. Banks that is scheduled for hearing on January 18, 1994."16/ (Id. (emphasis in original).

Based on the text of the letter, which is the only proof of Mr. Pierson's alleged tampering with Mr. Cooper, who was not called as a witness at the Hearing, the Court cannot say that Mr. Pierson or the Committee attempted to influence any potential testimony Mr. Cooper, or any other person, might give or have given at the Hearing.

As a second incident of alleged witness tampering and subornation of perjury, Respondent claims that Mr. Pierson and the Committee circulated to those witnesses scheduled to testify at the Hearing a list of 50 former clients, including their addresses, so that they `could confer with each other prior to the Hearing. (Objections at 10-13). Presumably, Respondent believes this was done so that the witnesses, and any potential witness, would contact each other and give the same testimony, i.e. that they thought Respondent was an attorney. 16/ On November 30, 1993; the Show Cause Hearing was continued to January 18, 1994. See Order #I). This Order was vacated on January 11, 1994 due to Respondent's filing of a Removal Petition. (See Order #8.). Upon Remand, the hearing was set for March 10, 1994. (See Order #9). After a telephone conference on March 8, 1994, the hearing was rescheduled for May 9, 1994. (See Order # 12). Respondent also provided two letters from Mr. Pierson, written on the CUP'S, ***which he contends are*** the ***witness lists which were*** wrongfully circulated. The first letter, dated February 23, 1994, is addressed to "Persons Interested in the Show Cause Hearing Re Simon Banks".Resp. Exh. 2). In this letter, Mr. Pierson indicated that the United States District Court for the District of Columbia remanded Banks' case, that the show cause hearing would convene before this Court and that the hearing would probably be set for March, 1994. (Id. at 1). Mr. Pierson also advised the recipients of the letter that this Court restricted to twelve the number of persons who could testify, and listed their names. (Id. at 2). Attached to the letter are the names and addresses of the "interested persons".

The second letter, dated March 11, 1994, is also addressed to "Persons Interested in the Show Cause Hearing Re Simon Banks". (Resp. Exh. 3). In this letter, Mr. Pierson informer to "interested persons" that the Hearing would be held on May 9, 1994. Id. He listed the names of the twelve persons he intended to call as witnesses, and indicated that any person not so named was

permitted to attend the Hearing. (Id.) Attached to the letter were the names and addresses of the "interested persons". (Id.)

Other than these allegations, Respondent has ***offered no*** proof that either letter was sent to facilitate a meeting of the persons named therein for the purpose of "concocting" testimony against Respondent. Respondent has not produced any evidence that Mr. Pierson, or any other Committee member, approached any witness to encourage that witness to testify falsely against Respondent No language in either lea suggests that it was sent for such a Purpose. Finally, Respondent claims that Mr. Pierson sent the names and addresses of his former clients to Shirley Stewart 17/ Jimmie Pratt, 'Title VII Outreach", R.A.M.B.O., Inc.", "Whistleblowers' Alliance", T. Jay Barrymore, Esq., Karin Stockpole, Esq, the law firm of Barrymore & Loots, and other unknown persons, so that these persons would influence the witnesses scheduled to testify at the Hearing. (Corrected Simon Banks' Supplement to Simon Banks Resp. to Committee's Closing Arguments and Comments and Simon Banks' Objection to Witness Tampering and Obstruction of the Rule on Witnesses, on the Part of Stuart Pierson and the Committee at 1-2 ("Supplement")). Specifically, Respondent contends that Mr. Pierson intended for these persons to contact the witnesses scheduled to testify at the Hearing and inform them that their Hearing testimony could form the basis of a class action suit against Respondent. Id. at 4-5). Presumably, Respondent believes that these persons would encourage the witnesses to testify that they though: Respondent was an attorney. As motivation for these persons to so influence the witnesses Respondent claims that they would receive pecuniary and propriety benefits *and* 17/ Respondent claims that Shirley Stewart is a former client of his. privileges, and profits which would be diverted from Respondent's proceeds.

To support this contention, Respondent has offered three letters. The first letter, written by Jimmie Pratt and Shirley Stewart on Title VII Outreach, Inc. letterhead., is dated June 13, 1994 and is addressed to "Persons Interested in Filing a Class Action Against Simon Banks/Job Protectors, Inc." (Supplement at Exh. 1). The letter states that a meeting to discus a class action will be held on June 28, 1994, and that the group is involved in political activities. (Id. The letter closes with the sentence, "[t]he Committee on Unauthorized Practice of Law has laid the groundwork. Now, we, as victims, must come together." (Id.

Since the letter is dated over one month after the Hearing was held, it is unclear how the authors intended to use it to encourage the Hearing witnesses to testify falsely. When the letter was written, the witnesses already had testified and no other hearing involving Respondent was, or has been, scheduled. There is no indication that any of the persons to whom the letter was sent were witnesses at the Hearing. In fact, it is impossible to determine to whom the letter actually was sent Moreover, no language in the letter suggests that either Mr. Pierson or the Committee provided any information to its authors or aided

18/ Respondent names the District of Columbia Court of Appeals as one of the parties that would monetarily gain as a result of this alleged conspiracy to tamper with the Hearing witnesses. (Supplement at 4). This allegation does not merit any response.

The authors in any way in their *efforts to institute* a class action suit against Respondent. The second letters 19/by T. Jay Barrymore on Barrymore & Loots lead, is dated July 7, 1994 and **is addressed to Mr. C. Roger** Cooper. (Supplement Exh. 2). The letter informs Mr. Cooper of the meeting held on June 28, 1994 to discuss the possibility of bringing a class action suit against Respondent, and *quotes the fee the firm would charge if such as* action were

pursued. (Id. In the letter, Mr. Barrymore indicates that he was in contact with Mr. Pierson, who "has volunteered to provide whatever assistance the Committee may legitimately give" and who has provided copies of some documents the Committee filed in the present action. (Id.) This letter was written more than two months after the Hearing was held. Again, based upon its contents, it is unclear how its authors intended to use it as a means of suborning perjury against Respondent at the May 9 Hearing. Except for Mr. Cooper, the addressee, it is impossible to determine to whom this letter was sent and if, indeed, it was sent to anyone who testified at *the* Hearing. _According to the letter, `Mr. Pierson offered only assistance that he could give legitimately", which, presumably meant lawfully.20/ Finally, the unspecified, documents which the letter indicates Mr. Pierson sent to Mr. Barrymore are part 19/ This appears to be a three page letter, but the Respondent has failed to include the second page . . . . _2O/ There is no basis .provided by Respondent to conclude that Mr. Pierson ever provided anything to Mr. Barrymore. of the public record because they were filed in the instant case. Thus, there is no basis to conclude that Mr. Pierson committed any wrongdoing in

furnishing Mr. Barrymore with copies. The third letter, written by Shirley Stewart on Title VII Outreach letterhead and dated June 15, 1994, was addressed to no one; it merely began with the word "Greetings". (Resp. Exh. 5). The letter indicated that Title VII Outreach. *which was* interested in gay rights issues, was putting together a forum for mayoral candidates because it could not rely on other leaders to address these issues. Discrimination at the hands of Respondent was mentioned as one of these issues. (Id.) This letter was written over one month after the Hearing was conducted. The subject of the letter had absolutely no relation to the Hearing. Except for the mention of Respondent as a person who discriminated against gays, this letter had nothing to do with Respondent. Based upon the letter itself, it is impossible to conclude that its authors intended to use it to encourage Hearing witnesses to testify falsely about Respondent Furthermore, there was no mention of Mr. Pierson or the Committee in the letter, and nothing in the letter suggests that either Mr. Pierson or the Committee provided the authors with any information about Respondent In sum, Respondent has provided no proof to support his allegations of witness tampering or subornation of perjury on the part of Mr. Pierson or the CUP. The various letters he provided do not indicate that either Mr. Pierson or the CUP has approached any witness with the possibility of testifying falsely against Respondent, or that any witness did in fact testify falsely.21/ Furthermore, Respondent has offered no evidence, by way of affidavit or otherwise, to support his claims. Third, Respondent asks that certain witnesses' testimony be stricken because those witnesses testified falsely.22/ The argument that no witnesses is credible because each signed a Disclosure Statement, which indicated that Respondent was not licensed to practice law, is the basis for Respondent's claims regarding each witness.

The Court finds this argument unpersuasive. Respondent has done nothing more than make baseless allegations which he utterly fails to support. The little evidence offered by Respondent falls far short of making any showing, let alone a prima facie showing, that any *witness* testified falsely. That each witness signed a Disclosure Statement or other document, by itself; is insufficient evidence to prove that the witness lied.

Furthermore, those documents signed by each witness actually bolster each witness' testimony because the documents consistently fail to comply with requirements of the 1987 *Injunction. For* example, the documents demonstrate

21/ See Infra at 29-32 for a discussion of Respondent's allegations that all twelve witnesses testified falsely at the Hearing.

22/ 'In his "Response", Respondent alleged that the following persons testified falsely: Angela Afflick, Michael Brock, David Cohen, Judith Christian. Marie Porter, Valerie White and Elizabeth Hunter. (Resp. at 5-6, 11-12, 14-15). Not one of these persons testified at the Hearing.

(1) Respondent's failure to include the required statement in documents related to the representation of individuals before an agency,

(2) Respondent's use of prohibited terms that refer to him as "Esquire" or other terms which connote that he is licensed to practice law in the District of

Columbia; (3) Respondent's use of prohibited terms that refer to him as an *"administrative law* judge" or other terms which suggests that his former employment as a hearing examiner constitutes a license to practice law in the

District of Columbia and; (4) Respondent's use of the documents for the purpose of misleading the public into believing that he is licensed to practice law or that he maintains an office for the practice of law in the District of Columbia. Banks, supra, 561 A.2d at 168-69. *Respondent's claims* of false testimony are too little and too late. By failing to attend the Hearing, he waived his opportunity to cross-examine each witness and to test the veracity of each witness' testimony and the exhibits admitted into evidence. Moreover, the Court, which herd all the testimony and which had an opportunity to observe the witnesses' demeanor, finds that no witness testified falsely. As explained above, Ms. Robinson, Ms. Reese, Mr. McAllister, Ms. Webb, Ms. Hall and Ms. Berkley all testified that they believed Respondent was an attorney, (May 9 Tr. at 25, 55, 68, 73, 80, 88, 96). Ms. Robinson, See also Order #3, where the Court deemed admitted the CUP's Second Request for Admissions due to Respondent's failure to file objections. The effect of this Order was to deem the fast 41 exhibits admissible.

Mr. McAllister, Ms. Webb and ***Ms. Hall testified*** that Respondent never informed them that he was not a lawyer. (Id. at 25. 68, 80-81, 88). Ms. Webb stated that Respondent told her that he wrote a *brief in* the Watergate case, and that he was an attorney working on the BCCI case. (Id. at 80-81). Ms. Hall recounted that Respondent told him that he had represented Jesse Jackson and Mayor Marion Barry. ( Id. at 89).

In addition, Ms. Webb testified that photos on Respondent's wall of himself with Justice Thurgood Marshall, former President Jimmy Carter and Walter Fauntroy led her to believe that he was an attorney. (Id. at 81). Ms. Hall and Ms. Berkley both testified that on Respondent's wail hung a license indicating that he was an attorney. (Id. at 89, 96). There is nothing in the record or in any of the witnesses' demeanor to suggest, let alone prove, that anyone testified falsely when they stated that they believed Respondent was an attorney. The documents signed by the witnesses, ' which are the basis of Respondent's arguments do not suggest otherwise. . In fact; they actually support the witnesses' testimony that they believed Respondent was an attorney because of their blatant violations of the 1987 Injunction."24/

Respondent repeatedly accuses the witnesses of lying. For example, Respondent argues that since Mr. McAllister and Ms. Webb signed receipts which indicated that Respondent could not represent them in a court of law,

24/ See discussion of clients' documents, supra at 10-19. 1

their testimony is false. (Objections at 7). However. Respondent *did* not offer these alleged receipts into evidence. Thus, with respect to Mr. McAllister, there exists no proof that he actually signed such a receipt, and even if he did sign a receipt that included the language, as Respondent alleges, it would not be proof that Mr. Mcallister lied. With respect to Ms. Webb, even though the receipt was not ***offered into*** **evidence, Respondent** attached other documents signed by Ms. Webb as Exhibit 10 to Simon Banks' Response to Statement of Street

Pierson that He Did Not Tamper With the Witnesses Whom Testified at the May 9, 1994 Contempt Proceedings. The documents, a Retainer Agreement and a Receipt, both violate the 1987 Injunction because neither contains the required statement that Respondent is "not admitted to the practice of law in the District of Columbia or any other jurisdiction." (Resp. Exh. 10; Banks, supra, 561 A.2d at 168-169.) In addition, both contain the phrases "former administrative law judges" and "administrative hearing advocates". Id As further proof of Ms. Webb's alleged falsities, Respondent maintains that she never proffered a receipt for the money she claimed to have paid him. (May 9 Tr. at 80). However, failure to ***offer a*** receipt to back up her testimony does not prove that her testimony is false. Moreover, if the Court were to credit Respondent's documentation, he defeated his own

argument because he provided a copy of a receipt for payment of 51000 cash from Ms. Webb. (Rap. Exh. 10). Respondent claims Mr. McAllister also lied when he testified that Respondent failed ***to return his*** papas. (May 9 Tr. at 74-75). Although *Respondent claims that* he red Mr. McAllister's papas, (Objections at 7), he *offers* no proof to *support this assertion. Nothing in Mr.* McAllister's *demeanor* indicted that his statement was inaccurate Respondent *further claims* that Mr. McAllister's testimony *should* be stricken because the Committee offered documents which were not served upon Respondent, as required by this Court's *Orders of October 27, 1993 and* November 30, 1993. The Court, however, did not admit those documents into evidence because the Committee did not comply with those Orders. (May 9 Tr. at 72). Moreover; Mr. McAllister made no reference in his testimony to the contents of those documents. The documents, therefore, provide no basis for striking Mr. McAllister's testimony.

Respondent claims that Ms. Webb lied when she testified that Respondent did *nothing on* her case. (May 9 Tr. at 83-84). Respondent claims to have filed an appeal on her behalf. However, he *offers absolutely* no evidence that he did so. Respondent also maintains that Ms. Berkley lied when she testified that Respondent performed no work on ha case, (see May 9 Tr. at 98), bemuse he negotiated a settlement on her behalf. Respondent likewise offers no proof of this alleged settlement offer. Significantly, Respondent had the opportunity on cross-examination to explore the contested issues with the witnesses; however, Respondent voluntarily chose to forego this opportunity by failing to attend the Hearing.

Respondent Rather objects to Mr. McAllister and Ms. Berkley's testimony because they were "called from a new witness list after Respondent ***attempted to*** engage in discovery in 1992," (Objections at 7, 10), thus their testimony should be stricken. This claim is completely meritless. In compliance with this Court's Orders of October 27, 1993 and November 30, 1993, Petitioner served upon Respondent a list of the witnesses he intended to call, and Mr. McAllister and Ms. Berkley were included on that list Nov. 10, 1993 Ltr. from the Pet'r to Resp't; Nov. 17, 1993 Lin from the Pet'r to Resp't; Committee's Detailed Witness List, dated May 4, 1994). There is nothing in, or outside, the record to suggest that Respondent was denied discovery. Respondent's Objections to Admission of Evidence . The proper time for Respondent to have raised objections to admission ofevidence was at the Hearing. See Mavs v. Sanford, 641 A.2d 855, 856 (D.C. 1994); Rothberg v.

-Quadrangle Dev. ***Corp.***, 646 A2d 309, 312 n.10 (D.C. 1994). Respondent waived his opportunity to object by his voluntary absence at the Hearing. Nonetheless, the Court will address his arguments. Petitioner offered, and the Court admitted, into evidence admissions of Respondent which the Court deemed admitted in Order #3. (May 9 Tr. at 8-11). These admissions were deemed admitted because Respondent failed to comply with this Court's Order directing him to respond to Petitioner's requests for discovery, even though Respondent was granted two extensions of time in order to comply. (See Order #3 and un-numbered Orders, dated December 6 & 7, 1993).

Respondent also argues that, because of his Removal Petition and his appeal of the Remand Order, he was tenable to comply with this Court's Order #3. Respondent contends that due to the removal and his appeal, he was not afforded discovery and discovery ceased. These excuses for his failure to comply with Order #3 are without mail Respondent had not yet filed his Removal Petition whey Order #3 was entered. (See Order # 11). Respondent's attempt to remove the case, therefore, could not possibly interfere with his ability to comply with Order #3- Even if the Removal Petition had bees filed after the issuance of Order #3, Respondent would nonetheless be required to comply with that Order. "Upon removal, the federal court must treat all state court rulings as if they had occurred in federal court." Piekarski v. Home Owners Savings Bank, 759 F. Supp 542, 544 (D. Mien. 1991). Finally, Respondent did not file a motion to stay the case pending his appeal of the Remand Order. Thus, his act of filing the appeal did not automatically stay discovery in this case. See Dorsey, supra, 357 N.E.-2d at 283 *25/*

25/ Respondent filed Simon Basks' Motion to Strike Admissions Entered Including Any and All Affidavits Executed by Stuart Pierson and Richard Beverly. The basis for this Motion is that Mr. Pierson engaged in ethics violations by disseminating witness lists and lists of Banks' former clients. The Court has addressed and rejected these arguments, supra at 23-27.

Respondent's Objections to Admission of Certain Exhibits

Respondent waived his opportunity to object by his voluntary failure to attend the Hearing. See Mavs, supra, 641 A.2d at 856. The Court, however, will address his arguments. Respondent objects to the admission into evidence of Exhibits 1-21, 35 36 and 39 on the basis that they are ***based upon*** hearsay and contain false

'statements. The veracity of each **exhibit was favorably** determined **by Order #3,** according to which each of these exhibits was deemed admitted. The basis of Order #3 is discussed supra at 33, Respondent also objects to the admission into evidence of Exhibits 42-50. Of these particular Exhi'bits, only 47 and 49 were admitted into evidence. With respect to each, a proper foundation was established for its admission.

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26/Respondent also objects to the overall proceedings. The gist of his arguments is that the Committee, Mr. Pierson, the Court and the District of Columbia government have conspired to deprive him of various Constitutional and statutory rights. Specifically, Respondent claims that the District of Columbia Court of Appeals Rule 49 is unconstitutional; he has been subjected to retroactive rulemaking; his first amendment rights have been violated; *his* rights under 42 U.S.C. §§ 1983, 1985 have been violated; he is the victim of malicious prosecution, harassment and abuse of process; and that he has been deprived of his right to due process and equal protection. Each of these arguments has already been raised and rejected in this case. See Order #6, Order #7. Those rulings, as "law of the case", will be disregarded only if the Court now finds that they were "clearly erroneous". Kleinbart v. United State. 604 A2d 861, 866-867 (D.C. 1992); Williams v. Mount JezerelBaptist Church. 589 A2d 901, 907-908 (D.C. 1991). Respondent has pointed to neither newly presented facts nor a change in existing law. Therefore, the Court cannot say that its earlier rulings were clearly erroneous. See Williams, supra, 589 A.2d. at 907-908.
Simon Banks' First Motion To Strike Any and AD Exhibits and/or Other Pleadings Submitted to the Court Which Have Not Been Identified By a Competent Witness Whom Was *Either the* Author and/or Designated Recipient of Such Pleading and Motion to Strike Any and All Affidavits of Stuart Pierson and Any and All Other Parties Whom Seek to Bide Behind Affidavits and Preclude Cross-Examination and Confrontation and Respondent Submit Objection to Any and All Such Testimony Adduced on the Record at the May 9, 1994 Proceedings.

Respondent contends *in this* Motion that affidavits admitted by the Court at the May 9, 1994 hearing violate Respondent's Constitutional rights. (Mot. Of Resp't at 2-3). Respondent further argues that the witnesses were prejudicial to Respondent and to "the integrity of justice; due process and the impartiality of

the court" because the affiants were not approved by the court in its pre-hearing order. Id.)

Respondent's Motion is comprised of conclusory assertions, which are Unsupported by facts. *Although some* affidavits admitted by the Court were not from people who testified at the May 9, 1994 hearing, such affidavits were part of the exhibits admitted as true and correct, as determined by Order #3, as a result of Respondent's failure to object in response to a properly served Request for Admissions. Petitioner offered, and the Court admitted into evidence, admissions of Respondent which the Court deemed admitted in Order #3. (May 9 Tr. at 8-11; see. supra. at 33). Respondent further objects to testimony given by Richard Beverly, who is employed by the District of Columbia Office of Employee Appeals. (Mot. Of Resp't at 3.) Respondent maintains that he was not afforded the opportunity to take discovery of Mr. Beverly and other government employees. (Id However, Mr. Beverly did not testify at the May 9, 1994 hearing. The only people who testified were those whose names, addresses and phone numbers a (where available) were famished to Respondent in November, 1993. SeeNov. 10, 1993 Ltr. from Pet'r to Resp't; Nov. 17, 1993 Ltr. from Pet'r to Resp't; Committee's Detailed Witness List, dated May 4, 1994). Although he had the names of the prospective witnesses, Respondent never sought discovery in compliance with the rules, and there is no evidence that he was ever denied discovery by the Court. Simon Banks Motion to Strike the Testimony of Each Witness That Tested at the May 9, 1994 Contempt Proceedings and Motion For Post Hearing Discovery on the Basis of Witness Tampering and Obstruction of the Rule on Witnesses, on the Part of Stuart Pierson and the Committee Respondent's Motion consists of only two sentences, which state that Respondent incorporates by reference 'Simon Banks' Response to Committee's Closing Argument and Comments, and Simon Banks' Objection to Witness Tampering and Obstruction of the Rule on Witnesses, on the Part of Stuart Pierson and the Committee" and "Corrected Simon Banks' Supplement to Simon Banks' Response to Committee's Closing Argument and Comments, and Simon Banks' Objection to Witness Tampering and Obstruction of the Rule on Witnesses, on the Part of Stuart Pierson and the Committee." (Mot of Re sp't at 1-2)

Insofar as Respondent's motion ***incorporates arguments*** from other motions previously dealt with, or otherwise dealt with in this Order, this Motion ***will be*** denied for the reasons stated with

references to those motions. Simon Banks' First Motion to Strike the Testimony of Any and All Witnesses that Were Not Approved by the Court in its Pre-Hearing Order, After the Court Ordered the Reduction of Witnesses to be Called by the Committee and Respondent's Objection to Any and All Such Testimony Adduced on the Record at the May 9, 1994 Proceedings Respondent argues that the Court ***should strike*** **the testimony** of any witnesses testifying at the May 9, 1994 hearing that were not approved by the Court in its pre-hearing Order because such testimony violates Respondent's Constitutional rights. (Mot. of Resp't at 1-2.) Moreover, Respondent argues that such testimony is *prejudicial and deprives* him of a fair hearing, and that to admit such testimony is an abuse of discretion. (Id. at 2.) The Court sees no difference between the instant Motion *and "Simon* Banks' First Motion To Strike Any and All Exhibits and/or Other Pleadings ***Submitted to*** the Court Which Have Not Been Identified By a Competent . Witness Whom Was Either the Author and/or Designated Recipient of Such Pleading and Motion to Strike Any and All Affidavits of Stuart Pierson *and* Any and All Other Parties Whom Seek to Hide Behind Affidavits and Preclude Cross-Examination and Confrontation and Respondent Submit Objection to Any.'" and All Such Testimony Adduced on the Record at the May 9, 1994 Proceedings," discussed above, which was filed on the same day. This Motion therefore is lacking merit for the same reasons, as discussed above. Simon Banks' Motion to Strike Admissions Entered Including Any and All Affidavits ***Executed by*** **Smart** Pierson and ***Richard*** Beverly.

Respondent argues that admission of Mr. Pierson's affidavits violates Respondent's right to due process because Mr. Pierson's name was not provided to Respondent as a witness he could depose. (Mem. .of P. & A of Resp't at 2.) Respondent further maintains that Mr. Pierson's affidavit is based on hearsay, and therefore is inadmissible. (Id.) The three affidavits of Mr. Pierson were designated as May 9 Exhibits 42, 43, and 44. These three exhibits were not introduced into evidence or considered by the Court.' Therefore, there is no need to consider this argument of Respondent.

Respondent further claims that he was not provided with information regarding the alleged complainants, and therefore has been unable to resPand to the complaints. Iced. at 3.) Respondent has made these assertions without a shred of evidence to support theca. Respondent was Furnished with the names, addresses and

phone numbers (where available) of all people that would testify in November, 1993: See Nov. 10, 1993 *Ltr.. from* Pet'r to Resp't; Nov. 17, 2-7/ Pursuant to Order #3, the contents of Pierson's three affidavits were deemed admitted. While the Court does not base-its decision in any way upon the contents of the affidavits, they wee, as a procedural matter, admissible for use as evidence. -

1993 Ltr. from Pet'r to Respite ***Committee's*** Detailed Witness List, dated May 4, 1994). ***Although*** he had the names of the prospective witnesses, Respondent ***never sought*** discovery in compliance with the rules, and there is no evidence that he was ever denied discovery by the Court. Dr. Simon Banks' Motion for Temporary, Preliminary and Permanent Injunctive Relief and for Mandamus Against Stuart Pierson and the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law Respondent's Motion has been brought in the wrong forum. This Court has a limited mandate, namely, to resolve the issue of allegations of Respondent's violation of the 1987 Injunction. Accordingly, Respondent's Motion will be denied without prejudice. Dr. Simon Banks' Motion and Complaint for Declaratory Relief Pursuant to 28 U.S.C. §2201 Seeking a Declaration of the Constitutionality of District of Columbia Rule 49, the Injunction, and the Ethical Propriety and Legal Validity of the conduct of Stuart Pierson Respondent's Motion has been brought in the wrong forum. This Court has a limited mandate, namely, to resolve the issue of allegations of Respondent's violation of the 1987 Injunction. Moreover, much of Respondent's Motion has been addressed by this Court in Order #6 and/or above. It should be noted that any filing repeating matters that were decided in Order #6 may. violate Rule 11. Respondent's Motion will be denied without prejudice.

Committee's Motion for Injunction Prohibiting Retaliation and Intimidation Against Witnesses The Committee's Motion likewise has been This Court has a limited mandate, namely, to resolve the issue of allegations of Respondent's violation of the 1987 Injunction. Motions concerning the retaliation and intimidation of witnesses should be submitted in *the case* of Banks v. Barrymore Loots, et al. (CA No. 94-9785), currently pending in the Superior Court. Respondent's Motion will be denied without prejudice. Respondent's Conduct Continues to Violate the 1987 Iniunction Based upon the foregoing evidentiary findings, the Court further finds as follows:

1. Respondent has continued to use Job Protectors' printed stationery and business *cards* advertising his qualifications with such terms as "Administrative Hearing Advocates", "Hearing Examiners", Advocates", "Representation by Former Administrative Law Judges" and "Nationwide Representation".

2. Respondent has executed documents *with* customers and made formal filings giving the clear impression that he is retained as a duly licensed attorney.

3. Respondent has used his Job Protectors' printed stationery to communicate with third parties, indicating by his name such terms as "Former Administrative Law Judge" and "Esquire", or abbreviations of such terms.

4. Respondent has issued written legal opinions on Job Protectors' stationery. 28/

5. Respondent has distributed business cards, using such terms as "Former Administrative Law Judge" and Nationwide Representation".

6. Respondent has continued to advertise in the newspaper and over the radio in a manner which violates the 1987 Injunction.

7. Respondent has failed to include in retainer agreements, correspondence, receipts, privacy releases, or other business documents the express disclaimer required by the Court's 1987 Injunction. See Banks. supra. 561 A.2d at 168, 14.

8. Members of the public continue to suffer from the misimpression that Respondent is authorized to practice law in the District of Columbia. These complaints indicate that Respondent has taken substantial sums of money from misled and unsuspecting people, and refused to return their money when they have complained

9. Respondent has asserted the authority to initiate court litigation for customers, in violation of the first paragraph of the 1987 Injunction.29/

28/ See, supra, discussion of the testimony of the following witnesses: Ms. Hall at 10, Ms. King at 12, Ms. Robinson at 16 and Ms. Reese at 17, 29/ See supra for discussion of the testimony of the following witnesses: Ms. Reese at 16-17, Mr. McAllister at 17 and Ms. Walker at 18. In sum, the findings of Judge Gallagher is 1987 (Banks, supra, 561 A.2d at 163; supra at 2) remain equally true. The only difference between this Court's findings and those of Judge Gallagher is the passage of time. Conclusions of Law

This Court has statutory authority to regulate the practice of law in the District of Columbia. D.C. Code § 11-2501(a). ***See***

*also* Brookens v. Committee on Unauthorized Practice of Law 538 A.2d 1120, 1125 n.13 (D.C. 1988). The Court's authority to issue findings of contempt is conferred directly by D.C. Code § 11-741. Additionally, courts have inherent power to levy contempt. Robinson v. Howard University. 455 A.2d 1363, 1369 (D.C. 1983).

As shown by the evidence admitted at the hearing on this matter and facts set ***forth above,*** the evidence is clear and convincing that Respondent has flagrantly, intentionally, repeatedly and contumaciously violated virtually every provision of the Court's 1987 Injunction30/ He continues his conduct, seven years after that order.

Specifically, Respondent has used terms prohibited by the injunction; he has used advertising materials, business cards, stationery and other business documents which use those same terms and failed to include the required disclaimer, he has continued to engage in conduct which is calculated and intended to mislead the public into believing he is licensed to practice law; he

30/ The quantum and quality of the evidence-presented would satisfy a finding of criminal contempt. Indeed, the evidence establishes Respondent's violations beyond a reasonable doubt. It has prepared and issued written legal opinions; and he has asserted authority to initiate litigation for others. As Respondent well knew through the proceedings and issuance of the 1987 Injunction, the penalties available for enforcement of Rule 49 include contempt and injunction. Appropriate Remedies In circumstances of repeated contumacious conduct, a court may issue orders necessary to assure compliance with its injunctions. See e.g. NOW v. Operation Rescue. 747 F. Supp. 772 (D.D.C. 1990).

As the Findings of Fact demonstrate, Respondent has knowingly, continuously and flagrantly flouted the Court's 1987 Injunction. Even if he had not been trained in the law, he would have no justification following issuance of the Injunction for not obeying it. As this Court has noted in open court and in numerous orders, Respondent is required to comply with court orders unless they have been stayed. Despite Respondent's continual motions to a variety of courts, the 1987 Injunction never has been stayed.

All of Respondent's various appeals and arguments against the 1987 Injunction were exhausted, at the latest, by 1989. As indicated in the Court's Order #6, denying Respondent's motion to vacate that. Injunction, he made all the arguments he raises now

against the Injunction during those various attacks in 1987-1989. Moreover, as also indicated in Order #6, Respondent is precluded from raising again not only the arguments he actually made, but those he could have made against the 1987 Injunction. *As the* Findings of Fact clearly demonstrate, Respondent knowingly continued to engage in precisely the conduct that the 1987 Injunction prohibited. Specifically, Respondent continued to use terms that were calculated to mislead and continued to mislead unsuspecting members of the public unlearned in the law. Most prominently, those terms were: "former administrative law judges)", which the 1987 ***Injunction expressly*** **prohibited** upon a finding that it was false, as well as misleading; "advocate", which the 1987 Injunction expressly prohibited; and "Esq.", which the 1987 Injunction expressly prohibited Respondent further violated the 1987 Injunction by fig to include the few occasions when he used a disclaimer similar to tha: required, Respondent overrode its notifying effect by requiring the customer to sign it in conjunction with the simultaneous signing of other papers, and by other statements and actions calculated to indicate that he could handle whatever legal problems the person had regarding his or her employment As evidence at the hearing indicated, he also required at least one customer to back-date documents regarding his engagement to indicate falsely that the papers had ***been executed*** at the initial meeting with him. (May 9 Tr. at 34). In most ***instances, where*** any notice of his qualifications and authority were acknowledged by customers, Respondent used the Disclosure Statement form found misleading in the 1987 Injunction. Respondent also violated the general ***prohibitions*** of the 1987 injunction by referring to 'nationwide representation and representation m foreign countries, by continuing to refer to himself as going to court and by having his secretary indicate that he was in court when he was rot available to callers. Although the Court theoretically has available numerous remedies, the instant case presents difficulties regarding choice of remedies. The two most obvious - incarceration and fines - are not viable remedies for reasons stated below. Given the conduct of Respondent hat, use of those two particular remedies legally would convert this case from civil contempt to crimiral contempt. For whatever reason, the Committee elected to seek only civil contempt. Based on the Committee's choice, the Court issued its Order to Show Cause as one limited to civil contempt Notwithstanding the magnitude and gravity of the proven

violations by Respondent of the 1987 Injunction, it is not possible at this time, constitutionally or procedurally, to convert these proceedings to one for ***criminal*** contempt where the Court would have available the options of imprisonment and fines. Accordingly, the Court will set out below its reasons for both accepting and rejecting the various remedies sought by the Committee 31/ 2,/ The Court also recognizes that, notwithstanding the limitations upon it, both the Committee and persons with whom Respondent has dealt may have other forms of recourse. Respondent's Privilege to Practice Pursuant to D.C. App. R 49(c)(4) Will Be Withdrawn

There is as exception to the general prohibition against practicing law in the District of Columbia without being a member *of the D.C.* Bar is D.C. Court of Appeals Rule 49 for practitioners before federal agencies which permits representation by persons not admitted to the D.C. Bar. However that exception is expressly limited: (4) Nothing herein shall prohibit any attorney from practicing before any department, commission, or agency of the United States to the extent that such practice is authorized by nay rule or regulation of any such department, commission or agency, provided the person is not otherwise regularly engaged in the practice of law is the District of Columbia or is not in any manner, except as permitted by the license granted by such department, commission or agency, holding out as authorized or qualified to practice law in the District of Columbia without having become an enrolled active member of the Bar of this court. D.C. App. R 49(c)(4) (emphasis added). Respondent continually has flouted the express limitation of the exception in that he has held himself out as authorized to practice law in the District of Columbia. Accordingly, with regard to practice before federal agencies, it is appropriate, in order to assure compliance with Rule 49 and this Order, to withdraw Respondent's privilege of using this exception as the basis to appear before any federal agency 32/

32/Any such federal agency may permit Respondent to practice before ii, so long as the agency rules do not rely exclusively an D.C.C.A. Rule 49(c)(4) as the basis for an individual to represent persons before it. (continued...)

An Expanded and Stricter Injunction When used in conjunction with actions available to the Court to coerce compliance, an expanded and stricter injunction is warranted, in view of the Findings of Fact herein. In this case, certain additional restrictions are warranted to deal with Respondent's conduct since

the 1987 Injunction, which conduct violates the 1987 Injunction. As set forth in the Order and Judgment set out in this Order, the 1987 Injunction will be expanded and made stricter by the language *highlighted and* underscored below:

FURTHER ORDERED that [Respondent] is hereby permanently enjoined and restrained specifically from: (1) Representing any person, other than himself, or any corporation, association, partnership, organization, or other entity in any court in the District of Columbia unless he is a member of the bar of the court in which such representation takes place; (2) Using such terms to describe himself or his qualifications as . . . "Esquire," "advocate," or any abbreviation of the foregoing terms, or any other term or description which reasonably denotes that [Respondent] is licensed to practice law in the District of Columbia; (3) Using such terms to describe *himself* or *his* qualifications as *"administrative law* judge(s), administrative trial advocate," any abbreviation of the foregoing terms, or any other similar term or description also which reasonably denotes, that [Respondent'] former employment as a hearing examiner 32/ (.....continued)

The Court need not address the issue of practice before District of Columbia agencies, since there is no exception in Rule 49 to practice before District of Columbia agencies by persons not admitted to practice law in the District of Columbia. constitutes a qualification or license to practice law in the District of Columbia;

(4) Describing his business as providing fecal representation in any field describing his professional or business activity as going to or acting in court or describing his business as providing nationwide representation;33/ (5)Holding out to provide. or providing legal opinions. or bolding out to, provide or providing opinions concerning the rights of any customer or member of the public under the laws of the United States or the several states and their subordinate jurisdictions Using any advertising materials, business cards, . . . stationery, . . . or any other business documents relating to representation of individuals before administrative agencies or courts in this, jurisdiction which do not expressly state [*]: THIS IS TO ADVISE THAT SIMON BANKS, AND SIMON BANKS T/A JOB PROTECTORS. IS NOT ADMITTED, AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF COLUMBIA, OR ANY OTHER JURISDICTION. HE IS NOT AUTHORIZED TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY

COURT IN DISTRICT OF COLUMBIA. HE IS NOT TO GIVE OPINIONS CONCERNING ANY PERSON'S LEGAL RIGHTS. This statement shall be printed, in all instances, in bold-face. underscored. in all capital letters. It shall be printed at the beginning of all documents not signed by customers in a separate paragraph in typeface no smaller than the lamest typeface of the remainder of the document With respect each document that a customer signs this statement shall appear at the beginning, in a separate paragraph in typeface no smaller than the largest typeface of the remainder of the document:
and the customer shall initial each line and then sign
33/ See. supra at 10-18. 34/ Id. at 10-18.

Immediately below the statement indicating the actual date of execution.

(7) Continuing to represent any client, person or entity presently being represented without giving such person or entitv prompt notice of Respondent's **lack** of admission to the District of Columbia Bar, and without providing the notice required in paragraph (6) above and obtaining from such person or ertity an initialled signed and dated acknowledgement of that notice.

(8) Otherwise engaging in verbal or written conduct which is calculated to mislead the public into concluding that ***[Respondent] is*** licensed to practice law within the District of Columbia;

(9)Otherwise engaging in verbal or written conduct which is intended to ***mislead*** the ***public into*** concluding that respondent maintains an office for the practice of law within the District of Columbia;

(10) Preparing for any person or for any client's signature pro tee, nay complaint, motion, or ***other*** pleading or brief for filing in any court located in the District of Columbia;

(11)Preparing any contract, . . . or preparation of any legal opinion;

(12) Otherwise engaging in any manner in the practice of law in the District of Columbia, as that term is defined in [Rule 49], or in any conduct that holds [Respondent] out as authorized or qualified to practice law in the District of Columbia, or in any other conduct prohibited by [Rule 49].

(13)Representing any person, other than himself, or any corporation, association, partnership, organization or other entity before any federal agency by relying exclusively on D.C. App. R. 49(c)(4) as the basis for such representative capacity.

Compensation to Victims of Violation of **the Injunction Will** Not Be Required The Committee has requested *that the Court* order Respondent to return fees paid to him by persons operating under the misimpression that he was authorized to practice law in the District of Columbia, where that misimpression v. was created by a knowing violation of the 1987 Injunction. The evidence demonstrates without contradiction that numerous customers of Respondent were misled by his use of "former administrative law judge(s)", "Esq.", and other terms and conduct, suggesting that he was an authorized and qualified legal practitioner in the District of Columbia. Such conduct was continual, Persistent and done in knowing and intentional violation of the 1987 Injunction. It is a longstanding practice that, where appropriate, compensation to victims of the violation of an injunction may be ordered on a finding of civil contempt. Punishment for civil contempt is remedial, and for the benefit of the complainant, while punishment for criminal contempt is punitive, to vindicate the authority of the court Hicks v. *Feiock, 485* U.S. 624, 631-32 (1988); Portland Feminist Women's Health, Center v. Advocates *For* Life, 877 F.2d 787, 790 (9th Cir.1989). A fine is remedial in nature when it is paid to the complainant, and punitive when it is paid to the court. 35/ Id. A sanction imposed to compel obedience to a lawful court order or to provide 35/ Consequently, the Court cannot order fine's to be paid to the Court, rather than to the victims, since this would be punitive in nature and not appropriate for this proceeding. ccompensation to a complaining party is civil. NOW v. Operation Rescue. 747 F. Supp. at 774 (citing New York State NOW v. Terry. 886 *F.2d* 1339, 1350-51 (2d Cir. 1989)). It is "well-settled that sanctions in civil contempt proceedings may be employed to coerce a contemnor into compliance with the court's order, and/or to compensate a complainant for losses sustained." Martin v. Guillot. *875 F.2d* 839 (11th Cir. 1989) (citing Sizzler Family Steak Horses v. Western Sizzlin Steak House. Inc., *793* F.2d *1529,* 1534 (11th Cir. *1986);* Rickard v. Auto Publisher. Inc., 735 *F.2d 450,* 458 (11th Cir. 1984)); NOW v. Operation Rescue, supra, 747 F. Supp. at 774. 36/ Such sanctions often take the form of a fine in the amount of damages suffered by the plaintiff: C. Wright and A. Miller, Federal Practice and Procedure § 2960, at *584-585 (1973).* Moreover, a civil contempt proceeding "'is wholly remedial, to serve only the purposes of the complainant, not to deter offenses against the public or to vindicate the authority of the court.'"

MacNeil v. United States. *236 F.2d* 149, *154* (1st.Cir. 36/ Although cases in the federal courts establish that courts have discretion to frame the sanction to fit the violation, the cases specifically state that the court has the power to order compensation to parties who have suffered because of violation of the court's order. See C. Wright and A. Miller, Federal Practice and Procedure § 2960, at 586 (citing Lance v. Plummet. 353 F.2d 585 (5th Cir. 1965), cert. denied. 384 U.S. 929 (1966)); United States v. United Wine Workers. *330* U.S. 258, 303-14 (1947) (injured party in civil contempt proceedings may be compensated for losses); General Signal Corp. v. Donallco, Inc.,787 F.2d *1376, 1380* (9th Cir. 1986) (sanctions for civil contempt may be imposed to compensate the party pursuing the contempt action for injuries resulting from the contemptuous behavior). *52* 1956)(citing United States v, International Union. 88 U.S. App. D.C. 341, 190 F.2d 865, 873 (1951)). A civil contempt proceeding is one between the original parties, and the penalty assessed may be ordered paid to another party for damages suffered as a result of the contemnor's violation of the injunction. Terminal Railroad Ass'n v. United States, 266 U.S. 17, 21 (1924); Martin, supra 875 F.2d at 845.

While the Court recognizes that one function of civil contempt is to make the aggrieved parties whole, the Court does not have the authority in this case to issue orders requiring the contemnor to compensate the victims of his violations of the 1987 Injunction. Respondent's former clients are not parties to this civil action, and therefore are not proper parties for this purpose. They are persons who testified at the hearing in support of the CUP's proof of violation of the injunction. Their testimony as to specific, personal financial losses was legally relevant only to the issue of whether Respondent had violated and was violating the 1987 Injunction. Consequently, the law does not support awarding compensatory damages in favor of these individuals.

Arguably, nether the original action nor the instant proceedings were instituted directly to benefit any named individual, as opposed to a class of individuals, who might be subject to harm by Respondent's unauthorized practice of law. Even if the Court theoretically had the ability to order compensation to Respondents victims, the Court would have to conduct trial proceedings for each individual witness to determine the correct amount of penalty to be assessed against Respondent. Any such litigation, however, should be *initiated by* each individual complainant against Respondent the *appropriate forum.*

Similarly, recoupment is not an available *remedy in* this case. Recoupment is an equitable remedy available to the Court in certain circumstances to effect *complete* relief for injured parties. See Emrich v. McNeil, 126 F.2d *841, 843 (D.C. Cir. 1942) (court will exercise its power to* give complete relief, including order to pay maintenance, where court had acquired equity jurisdiction). Failure to pay restitution in accordance with a court order has been found *to* be civil contempt United States v. Grin. 641 F. Supp. 1556, 1558-59 (D.D.C. 1986). As the Griffin court noted its power to impose sanctions for civil contempt includes both power to compel a defendant to obey a court order and power to "compensat[e] the contemnor's adversary for injuries resulting from the contemnor's noncompliance." Id. at 1559 (citing Shuffles v. Heritage Bank 720 F.2d 1141, 1147 (9th Cir. 1983)). Again, however, the case law does not deal with compensation of victims who are not the contemnor's adversary. Thus, this theory of recovery is similarly inapplicable in this case.

Court of Appeals Rule 49 expressly provides that the Committee may resolve complaints of unauthorized practice of law by requiring restitution, through formal agreement or consent order, to victims of violation of the rule D.C. App. R .9(e)(5)(b). Nether contingency, however, applies here. Attorneys' Few and Costs The CUP seeks recovery of its attorneys' fees **and costs.** As noted above, the Court finds that Respondent's violations of the 1987 Injunction have been willful, intentional, repeated and flagrant. Even without a finding of willfulness, Respondent's conduct and actions justify the awarding to CUP of attorneys' fees and costs. See Link v. District of Columbia. No. 93-C'V-580, (D.C. December 1, 1994). Accordingly, the Court will afford the CUP an opportunity to submit an itemization of fees and costs and request for reimbursement, and Respondent an opportunity to reply. Incarceration of Respondent is Not Appropriate
***in This*** Instance The CUP has requested that the Court order Respondent to be incarcerated for up to six months to purge his contempt, during which time he would have the power to achieve his release upon acknowledging under oath the following statement: I, Simon Banks, acknowledge that I have persistently and willfully violated the injunction issued by the. District of Columbia Court of Appeals on November 3, 1987, in the case of In re Banks. No. 87-97. I further acknowledge that my violation of that injunction has misled members of the public into

believing I am authorized to practice law in the District of Columbia. I further acknowledge that my violation of that injunction and the consequential misimpression caused members of the public to pay me money believing I was an authorized member of the D.C. Bar, and that such money was, therefore, wrongfully acquired. I farther acknowledge my obligation to pay back to such members of the public all such money, and to return to them all files and papers they have given me. *I further* acknowledge *my unqualified obligation to obey fully* the 1987 Injunction and the revised injunction issued by the Court of Appeals of the District of Columbia in In re Banks [1992] No. 92BG-652. Sanctions in civil contempt proceedings, including imprisonment, may be employed to coerce a contemnor into compliance with the Court's order, provided those sanctions permit the contemnor to avoid the sanctions *by* purging *himself of* the contempt NOW v. Operation Rescue 747 F. Supp. At *774; F*eiock, supra 485 U.S. at 632; United States v. Griffin, 641 F. Supp. 1556, 1559 (D.D.C. 1986). Although Respondent has engaged in continued flagrant violations *of* the 1987 Injunction, as recently as October of this year,37/ the Court reluctantly finds that incarceration is not a viable option in the circumstances *of* the conduct at issue here. The acknowledgements sought by the Committee do not serve to coerce compliance with any injunction. Since the CUP did not ask for 37/ The October violations of the 1987 Injunction involved Respondent's submission to the Court of his new, proposed business card, letterhead, receipt and disclosure statement, whereby Respondent refers to himself in the business card and disclosure statement as "Former Hearing Examiner - Judge"; and in his stationery, receipt and fax transmittal sheet as "Former Hearing Examiner". See **also supra** at 55-57. criminal contempt in the instant *action, the* Court chose not to consider it in these proceedings. However, *should* there be allegations of noncompliance with this Order justifying the issuance of an Order to Show *Cause, the Court will reserve the* option to proceed in the nature of criminal contempt at such time. Respondent's Assertions of Modification of Conduct On October 12, 1994, Respondent filed a document entitled "En Banc Notice of Cessation of Any and All Civil Protest Regarding the Injunction and Notice of Action to Fully Comply with All Aspects of the Injunction." Included with this filing was an indication that Respondent intends to sit for the February 1995 D.C. Bar Exam. Respondent states that he is

ordering new stationery which will state that he is "not licensed to practice law in any state" and will substitute the term "Former Hearing Examiners" for the term "Former Administrative Judge". Not long after submitting this "En Banc Notice", Respondent submitted to the Court his new, proposed business card, letterhead, receipt and disclosure. Statement. The Court notes with interest that the business card and disclosure statement refer to Respondent as "Former Hearing Examiner - Judge". In an amendment filed several days later, Respondent indicated some changes in his proposed documents. In so doing, he now added the reference to Judge as a part of the "Former Hearing Examiner" phraseology to his stationery, receipt and fax transmittal sheet.

The CUP responded to both submissions. Respondent, in turn, filed a Response to the Petitioners submissions. In his latest filing, Respondent repeated his litany dealt with in Order #6 and his unsupported allegations against Mr. Pierson. These latter allegations are mentioned above.

There is no basis to credit any of ***Respondent's assertions*** of reformation. Indeed, there is every reason to believe that the opposite will be true. When the 1987 Injunction issued, Respondent expressed as intention to comply with its terms. The evidence found credible by this Court is connection with the Hearing demonstrates clearly and convincingly that Respondent never did comply with the 1987 Injunction. The evidence was to the contrary Respondent continued to violate the 1987 Injunction since the time it was issued, at least until April,
1994. 38/ Even his proposed new business card, stationery, receipt and disclosure statement violate the 1987 Injunction, as noted by the CUP is its Responses. 39/

The Court judicially notes that at a hearing on October 21, 1994 before Commissioner Treanor in Armstrong v. Banks, SC 11133-94, Respondent argued that he was a "former hearing examiner judge" and a "former 38/ See, supra note 11.
39/ The October 24 Response and Opposition filed by the CUP details the **continuing and** violative defects of the proposals submitted by Respondent. administrative judge." 40/ This recent representation further illustrates Respondent's ongoing violation of the 1987 *Injunction.* ***In these*** circumstances, Respondent's professed reformations do not come close to persuading this Court of the bona fides of such reformations. To the contrary, the Court is all the more convinced by Respondent's most recent actions of the necessity for the finding of contempt herein and the issuance

of a stronger injunctive order. 41/ A JUDGMENT AND ORDER SHALL ISSUE A Judgment and Order shall issue contemporaneously with, and based upon these Findings of Fact and Conclusions of Law.

Appeal may be taken to the District of Columbia Court of Appeals within the time prescribed by law. Filing of an appeal, without issuance of a stay, shall not stay or delay the Judgment and Order. For the foregoing reasons it is this 13th day of January, 1995 hereby: ORDERED that Respondent is hereby found to be in Contempt of Court for violating the 1987 Injunction as set forth about; and it is,

40/ The Court listened to the *official* tape of the October 21 hearing. *41/ See* Marshall-v. Local Union No. 639. International Brotherhood of Teamsters. 193 U.S. App. D.C. 143, 146 n.14, 593 F.2d 1297, 1300 n. 14 (1979); Bailey v. Patterson, 376 F.2d 201, 205 (5th Cir. 1983) (quoting United States v. Oregon State Medical Society, 343 US. 326 (1952)), cert. denied. 376 U.S. 910 (1964).

FURTHER ORDERED that this Court having found and concluded that Respondent, Simon Banks, has violated this Court's rule prohibiting the unauthorized practice of law, D.C. App. R 49(b) and the 1987 injunction; it is

FURTHER ORDERED and ADJUDGED that Respondent is hereby permanently enjoined and restrained under Super. Ct. Civ. R 65, from (1) the practice of law in the District of Columbia, as the term "practice of law" is defined in D.C. App. R. 49(b)(1) and (3); and (2) holding out to the public that he is authorized to practice law in the District of Columbia in violation of the provisions of D.C. App. R 49(b)(2); and it is

FURTHER ORDERED that Respondent is hereby permanently enjoined and remained specifically from:

(1) Representing any person, other than himself or any corporation, association, partnership, organization, or other entity in any court in the District of Columbia unless he is a member of the bar of the court in which such representation takes place;

(2) (2) Using such terms to describe himself or his qualifications as "lawyer", "attorney", 'counsel", "counselor", "Esquire", "advocate", or any abbreviation of the foregoing terms, or any other term or description *which* reasonably denotes that Respondent is licensed to practice law in the District of Columbia;

(3) Using such terms to describe himself or his similar term or description also which reasonably denotes that

Respondent's former employment as a hearing examiner constitutes a qualification or license to practice law in the District of Columbia;

(3) Describing his business as providing legal representation in any field, describing his professional or business activity as going to, or acting in court, or describing his business as providing nationwide representation;

(4) (5) Holding out to provide, or providing legal opinions, or holding out to provide, or providing opinions concerning *the rights* of any customer or member of the public under the laws of *the* United States or the several states and their subordinate jurisdictions;

(6) Using any advertising materials, business cards, firm resumes, personal resumes, firm descriptions, stationery, personalized forms or any other business documents relating to representation of individuals before administrative agencies or courts in this jurisdiction which do not expressly state:

THIS IS TO ADVISE THAT SIMON BANKS. AND SIMON BANKS T/A JOB PROTECTORS, IS NOT ADMITTED, AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF *COLUMBIA, OR ANY OTHER* JURISDICTION. HE IS NOT AUTHORIZED. TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY *COURT IN THE* DISTRICT OF COLUMBIA. HE IS NOT AUTHORIZED TO GIVE OPINIONS CONCERNING ANY PERSON'S LEGAL RIGHTS.

This statement shall be printed, in all instances, in bold-face, underscored, in all capital letters. It shall be printed at the beginning of all documents not signed by customers in a separate paragraph in typeface no smaller than the largest typeface of the remainder of the document. With respect each document that a customer signs, this statement shall appear at the beginning, in a separate paragraph, in typeface no smaller than the largest typeface of the remainder of the document; and the customer shall initial each line and then sign immediately below the statement indicating the actual date of execution;

(7)Continuing to represent any client, person or entity presently being represented without giving such person or entity prompt notice of Respondent's lack of admission to the District of Columbia Bar, *and* without providing the notice required in paragraph (6) above and obtaining from such person or entity an initialled, signed and dated acknowledgement of that notice;

(8) Other engaging verbal or written conduct which is calculated to mislead the public into concluding that Respondent is licensed to practice law within *the* District of Columbia;

(9) Otherwise engaging is verbal or written conduct which is intended to mislead the public into concluding that respondent maintains an *office for the* practice *of law in the District of* Columbia;

(10) Preparing for any person or for any client's signature pro se, any complaint, motion or other pleading or brief for filing in any court located in the District of Columbia;

(11) Preparing any contract, deed, mortgage, *discharge,* assignment, lease, trust instrument, will, *codicil, or* other instrument for any person, or preparation of any legal opinion;

(12) Preparing or expressing formal opinions or consulting - with respect to any of the items enumerated in paragraphs (9) and (10) of this Order, or on any other matters of law;

(13) Otherwise *engaging in* any manner in the practice of law in the District of Columbia, as that term is defined in D.C. App. R 49(b)(3), or in any conduct that holds Respondent out as authorized or qualified to practice law in the District of Columbia, or in any other conduct prohibited by D.C. App. R 49(b); and

(14) Representing any person, other than himself or any corporation, association, *partnership, organization* or other entity exclusively on D.C. App. R 49(c)(4) as the basis for such representative capacity; and it is.

FURTHER ORDERED that in the event that Respondent becomes a qualified active member of the District of Columbia Bar at any time in the future, the injunctive provisions of this Judgment and Order shall thereupon .
cease to be of any force or effect; and it is

*FURTHER* ORDERED that Respondent Simon Banks' Response to Argument of Committee, Statement of Objections and Motions to Strike is DENIED; and it is

FURTHER ORDERED that Simon Banks' Motion to Strike Admissions Entered Including Any and All Affidavits Executed by Stuart Pierson and Richard Beverly is DENIED; and it is

FURTHER ORDERED that Simon Banks' First Motion To Strike Any and All Exhibits and/or Other Pleadings Submitted to the Court Which Have Not Been Identified By a Competent Witness Whom Was Either the Author and/or Designated

Recipient of Such Pleading and Motion to Strike Any and All Affidavits of Stuart Pierson and Any and All Other Parties Whom Seek to Hide Behind Affidavits and Preclude Cross-Examination and Confrontation and Respondent Submit Objection to Any and All Such Testimony Adduced on the Record at the May 9, 1994 Proceedings is DENIED; and it is

FURTHER ORDERED that Simon Banks' Motion to Strike the Testimony of Each Witness That Testified at the May 9, 1994 Contempt Proceedings and Motion For Post Hearing Discovery on the Basis of Witness Tampering and Obstruction of the Rule on Witnesses, *on* the Part of Stuart Pierson and the Committee is DENIED; and it is

FURTHER ORDERED that *Simon* Banks' First Motion to Strike the Testimony of Any and All Witnesses that Were Not Approved by the Court in its Pre-Hearing Order, After the Court Ordered the Reduction of Witnesses to be Called by the Committee and Respondent's Objection to Any and All Such Testimony Adduced on the Record at the May 9, 1994 Proceedings is DENIED; and it is

FURTHUR ORDERED that Simon Banks' Response to Argument of Committee/Statement of Objections and Motion to Strike is DENIED; and it is

Further ORDERED that Simon Banks' Motion That the Court Refer the Matter of Witness Tampering *and* Other Ethical Improprieties Committed By Stuart Pierson to the Bar Counsel to the Committee on Grievances to the District of Columbia Government's Ethics *Office to* the United States Office On Government Ethics to the American Bar Association Committees on Ethics and Professional Responsibility is DENIED; and it is

FURTHER ORDERED that Dr. Simon Banks' Motion for Temporary, Preliminary and Permanent Injunctive Relief and for Mandamus Against Stuart Pierson and the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law is DENIED WITHOUT PREJUDICE; *and* it is

FURTHER ORDERED that Dr. Simon Banks' Motion and Complaint for Declaratory Relief Pursuant to 28 U.S.C. §2201 Seeking a Declaration of the Constitutionality of District of Columbia Rule 49, the Injunction, and the Ethical Propriety and Legal Validity of the Conduct of Stuart Pierson is DENIED WITHOUT PREJUDICE; and it is

FURTHER ORDERED that the Committee's Motion for Injunction Prohibiting Retaliation *and* Intimidation Against Witnesses is DENIED WITHOUT PREJUDICE; *and it is*

FURTHER ORDERED that the CUP has until January 31, 1995 to submit to the Court and serve upon Respondent an itemization of any request for attorneys fees and costs; and it is

FURTHER ORDERED that Respondent has until February 21, 1995 in which to respond to such itemization. Richard A. Levie, Judge By Designation of the District of Columbia

Court of Appeals Copies to: Stuart F. Pierson, Esq. Davis Wright & Tremaine 1155 Connecticut Avenue, N.W., #700

Washington, D.C. 20036

Mr. Simon Banks 468 M Street, S.W. Washington, D.C. 20024L:\BANKS\ORD-18

DISTRICT OF COLUYMBIA
COURT OF APPEALS
[*NOV 26 1996*

[*COURT OF APPEALS* ]

No. M-198-96

NOTICE

The District of Columbia Court of Appeals is considering the adoption of amendments to D.C. App. R. 49 on the unauthorized practice of law. The proposed amendments were transmitted to the Court by the Board of Governors of the District of Columbia Bar. The District of Columbia Bar will publish the proposed rule and proposed commentary, and a report of the Committee on the Examination of Rule 49 in the December/January Bar Report of the District of Columbia Bar. Dopi3w or 5h3 p4opowql entitled *Proposed Clarification and Revision of District of Columbia Court of Appeals Rule 49 Concerning the Unauthorized Practice of* Law and the Report of the Committee on the Examination of Rule 49 are available from the District of Columbia Bar, 1250 H Street, N.W., Sixth Floor, Washington, D.C. 20005. The proposed rule and commentary are also available by visiting the District of Columbia Bar's web site at http://ww.dcbar.org.

This notice is published to afford interested parties an opportunity to submit written comments concerning the proposed amendments to Rule 49. Ten copies of any comments should be submitted to the Clerk, D.C. Court of Appeals, 500 Indiana

Avenue, N.W., Sixth Floor, Washington, D.C. 20001, by February 28, 1997.

COURT OF APPEALS
Clerk

DISTRICT OF COLUMBIA COURT OF APPEALS
No. 87-97

IN RE: SIMON BANKS, RESPONDENT.

JUDGMENT AND ORDER
Filed November 23, 1987'

This court having found and concluded that respondent, Simon Banks, has violated this court's rule prohibiting the unauthorized practice of law, D.C. App. R. 49 (b),1 it is this 23rd day of November, 1987 This Judgment and Order and the attached Memorandum Opinion are being published pursuant to the court's order of March 21, 1989, granting appellee's motion to publish.

1 D.C. App. R. 49 (b) provides: (b) Practice of law in the District of Columbia. (1) No person shall regularly engage in the practice of law in the District of Columbia or in any manner hold out as authorized or qualified to practice law in the District of Columbia unless enrolled as an active member of the Bar.

(2) No person, firm, association, bank or corporation shall, in the District of Columbia, advise or counsel any person on matters affecting legal rights, or practice or appear as an attorney at law for a person other than such person in any court, or furnish an attorney or attorneys to render legal services, or hold out to the public as being entitled to practice; or in any manner assume to be an attorney at law, or assume, or use or advertise the title of lawyer, attorney or counselor, or any equivalent title, in such manner as to convey the impression that such

ORDERED and ADJUDGED that respondent is hereby permanently enjoined and restrained, under Super. Ct. Civ. R. 65, from (1) the practice of law in the District of Columbia, as the term "practice of law" is defined in D. C. App. R. 49 (b) (1) and (3) ; and (2 ) holding out to the public that he is authorized to practice law in the District of Columbia in violation of the provisions of D.C. App. R. 49 (b) (2). It is

FURTHER ORDERED that respondent is hereby permanently enjoined and restrained specifically from:

(1) Representing any person, other than himself, or any corporation, association, partnership, organization, or other entity

in any court in the District of Columbia unless he is a member of the bar of the court in which such representation takes place;

(2) Using such terms to describe himself or his qualifications as "lawyer," "attorney," "counsel," "counselor," "Esquire," "advocate," or any abbreviation of the foreperson is entitled to practice law, or in any manner advertise that such person either alone or together with any other person or persons maintains an office for the practice of law in the District of Columbia, without being an enrolled active member of the Bar.

(3) The practice of law as used in this rule shall include, but is not limited to, appearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any other instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting the disposition of property or decedents' estates, or any pleadings of any kind in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other matters of law.

going terms, or any other term or description which reasonably denotes that respondent is licensed to practice law in the District of Columbia;

(3) Using such terms to describe himself or his qualifications as "administrative law judge," "administrative trial advocate," any abbreviation of the foregoing terms, or any other similar term or *description also* which reasonably denotes that respondent's former employment as a hearing examiner constitutes a qualification or license to practice law in the District of Columbia;

(4) Using any advertising materials, business cards, firm resumes, personal resumes, firm descriptions, stationery, personalized forms or any other business documents relating to representation of *individuals before* administrative agencies or courts in this jurisdiction which do not expressly state in a separate paragraph and in one complete sentence 2/ at the outset of the document that respondent is "not admitted to the practice of law in the District of Columbia or any other jurisdiction";

(5) Continuing to represent any client presently being represented without giving such client prompt notice of respondent's lack of admission to the District of Columbia Bar in *accordance with* the specifications in paragraph (4) of this Order;

(6) Otherwise engaging in verbal or written conduct which is calculated to mislead the public into concluding that respondent is licensed to practice law in the District of Columbia;

'The purpose of this provision on separateness is to deal with respondent's pertinent activities as revealed by the record in this proceeding and the findings and conclusions entered and to avoid intermingling of the statement with other representations in such a way as to negate the impact on the public of the disclaimer, as respondent has done in the past.

(7) Otherwise engaging in verbal, or written conduct which is intended to mislead the public into concluding that respondent maintains an office for the practice of law in the District of Columbia;

(8) Preparing for any person or for any client's signature pro se, any complaint, motion, or other pleading or brief for filing in any court located in the District of Columbia;

(9) Preparing any contract, deed, mortgage, discharge, assignment, lease, trust instrument, will, codicil, or other instrument for any person, or preparation of any legal opinion;

(10) Preparing or expressing formal opinions or consulting with respect to any of the items enumerated in paragraphs (7) and (8) of this Order, or on any other matters of law; and

(11) Otherwise engaging in any manner in the practice of law in the District of Columbia, as that term is defined in D. C. App. R. 49 (b) (3) , or in any conduct that holds respondent out as authorized or qualified to practice law in the District of Columbia, or in any other conduct prohibited by D.C. App. R. 49 (b) . It is

FURTHER ORDERED that in the event that respondent becomes a qualified active member of the District of Columbia Bar at any time in the future, the injunctive provisions of this Judgment and Order shall thereupon cease to be of any force or effect.

BY THE COURT:

/s/ George R. Gallagher

GEORGE R. GALLAGHER,

Senior Judge.

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**No. 87-97**

**IN RE: SIMON BANKS, RESPONDENT.**

On Petition of the Committee on Unauthorized Practice of Law for Injunctive Relief

**MEMORANDUM OPINION**

This court's Committee on Unauthorized Practice of Law ("petitioner" or "Committee") filed a petition pursuant to D.C. App. R. 49 (d) from an order to show cause why respondent, Simon Banks, should not be held in contempt for, and/or permanently enjoined from, violating D.C. App. R. 49 (b) concerning the unauthorized practice of law.1/ However, the Committee later withdrew its request for contempt, fine, and imprisonment on April 13, 1987. Thus, the court has before it only the Committee's remaining requests for equitable relief in the form of (1) injunctive relief, (2) an accounting by respondent of all fees received, (3) restitution of all fees received, and (4) "notice by respondent, both by advertisement in

1 It is a function of this court to encourage public confidence in the law and the legal profession. In discharging this duty, the court has a Committee on Admissions to assure that those seeking admission to practice in this jurisdiction meet certain minimum requirements as to competence and moral character; a Committee on Professional Responsibility to assure that persons admitted to the practice continue to measure up to those standards; and a Committee on Unauthorized Practice to assure that those not measuring up to such requirements are not permitted nevertheless to assume the mantle of the profession. This latter Committee instituted this proceeding.

*2/See* Committee's Response to Court's April 3, 1987, Request for Committee's Position Regarding Procedure, at 2. the *Washington Post Magazine* and by letter to all clients that he is not a lawyer and is not authorized to provide any legal services." The undersigned was assigned to conduct this proceeding.

The filing of the petition which initiated these proceedings was prompted by complaints received by the Committee in 1984 and 1985 concerning respondent. In response to those complaints, the Committee members met with respondent to discuss the matter and the terms of a possible settlement agreement. On September 12, 1985, the Committee and respondent entered into a settlement agreement. In its petition, the Committee alleges that respondent violated the 1985 settlement agreement,3/ as well as our Rule 49 (b) . 3 The settlement agreement provided in pertinent part that:

> 1. Banks will ensure that all business cards, stationery and advertising materials bearing his name comply with the following requirements: (a) Such materials shall not

(1) use the term "Esq." or "Esquire," or the term "Professional Association," "Professional Corporation," or any abbreviation thereof. (2) bear the likeness of the scales of justice or any similar design connoting the legal profession.

(3) contain an "M.B.O.C. Certification No." or other entry deceptively similar to a bar number. (4) contain the words "former administrative law judge" or "former in-house counsel" or other words suggestive of membership in the legal profession. (b) Such materials may contain the words "former hearing examiner," provided that they also contain the words "not admitted to the practice of law." 2. All listing in building directories, on office doors, etc. shall conform to paragraph [continued.I

On April *22, 1987,* respondent filed a motion for partial summary judgment in response to which the Committee, on April *30, 1987,* filed an opposition and a cross motion for summary judgment. Argument on these motions was heard on May *12, 1987,* and the court, in a Memorandum *Opinion and* Judgment filed May *26, 1987,*denied respondent's motion for partial summary judgment and petitioner's cross-motion for summary judgment. It issued a temporary restraining order pursuant' to Super, Ct. *Civ. R. 65 (b)* restraining respondent from (1) practicing law in the District of Columbia, and *(2 )* giving the *public* the impression that he is authorized to [Continued] 3. Banks and the Committee acknowledge that this Agreement does not deal with the question of whether Banks' representation of persons before certain agencies of the District of Columbia government contravenes Rule 49. The Committee reserves the right to pursue this issue in the future. If Banks continues to provide representation before such agencies, Banks shall communicate in writing at the outset of all relationships with prospective clients or clients that he is not licensed to practice law. Banks shall not represent to prospective clients, clients, adversaries of his clients, or any other person that he is an attorney.

4. Banks will not prepare for another person, for Banks' own signature or for any client's signature pro se, any complaint, motion or other pleading for filing in any court; located in the District of Columbia.

5. Banks will not prepare any contract, deed, mortgage, discharge, lease, trust instrument, will or other instrument for any person or prepare any legal opinion, or ;1

otherwise engage in the practice of law as defined in Rule 49.

practice law in the District of Columbia, in violation of D.C. App. R. 49 (b).

4/ At the commencement of the evidentiary hearing, respondent asserted that the court no longer had jurisdiction over the matter because he had just filed a removal petition in the United States District Court. After hearing argument on whether the hearing should be stayed, the court adjourned the hearing pending notice in relation to the petition for removal to the District Court. The United States District Court entered an order, dated June 15, 1987, dismissing the removal proceeding. The evidentiary hearing resumed on June 24, 1987, and continued on June 25 and July 7, 1987. 5/ Upon consideration of the pleadings filed, the testimony elicited at the hearing, the documentary evidence, and the various memoranda of law filed in this proceeding, the court makes findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

1. It is undisputed that respondent, a 1975 law school graduate, is not and never has been a member of the Bar of the District of Columbia, or any other bar.

2. It is also undisputed that respondent held the position of hearing examiner at the-District of Columbia Office of Human Rights from 1975-1976 and later at the District of Columbia Rental Accommodation Office.

4 By its terms, the temporary restraining order expired on June 4, 1987. No request for an extension was made by the Committee.

5/In addition to the motions outlined above, respondent filed some ten other motions in this proceeding between April 22, 1987, and June 23, 1987.

3. From September of 1986 through April of 1987, respondent advertised in the weekly *Washington Post Magazine*.The advertisement reads as follows:

JOB PROTECTORS
VICTIMS OF JOB DISCRIMINATION
On account of race, sex, handicapped status, promotion, demotion, rif'ed, harassment, unem ployment compensation. For representation by former hearing examiners also *known as admin istrative law judges* call: ( 202 ) 863-2292, 24 hours. ( Emphasis added.)

From September through October of 1986, the advertisement appeared in the *Washington Post* under the heading of "Legal Services." In October, 1986, respondent requested that the

advertisement be placed under the heading of "Unique Services." ' This change became effective in November of 1986, and the advertisement continued to run under "Unique Services" through April of 198?. The only other changes were the size of the advertisement, which increased from one inch to two inches; and then to three inches.

In addition, the *Washington Post* ran a promotional piece concerning the success of respondent's advertising campaign in the *Washington Post Magazine* in January of 1987, stating that "Job Protectors" is a "legal service," indicating that the *Washington Post* had concluded from its dealings with respondent that he was a practicing lawyer.

4. Respondent advertised Job Protectors over a local radio station, WHUR-FM, from February 24 to March 11, 1987. The text of the advertisement recorded by respondent reads as follows:

Hello. My name is Simon Banks, Chief Executive Officer of Job Protectors and a former chief hearing examiner. Have you been a victim of job discrimination or been treated differently than employees of other races, sex and handicap status? Has your employer harassed you or discriminated against you with respect to a promotion, seniority, penalty, workman's compensation or employment benefits? If so call Job Protectors at 543-7870. Job Protectors is a consulting firm that provides representation by former hearing examiners that are experienced in employment discrimination matters. If you are a victim of wrongful termination and require representation before the Equal Employment Opportunity Commission, the Office of Employee Appeals, the Merit System Protection Board and any grievance hearing or administrative appeal call Job Protectors at 543-7870. Job Protectors can protect your employment rights. Call 543-7870. That's Job Protectors, 543-7870.

5. Respondent advertised Job Protectors in the May 1987-88 edition of the *Washington Metropolitan Yellow* Pages under "Employment Agencies." The advertisement reads as follows

JOB PROTECTORS

Victims of Job Discrimination

On Account of Race, Sex, Handicapped Status, Promotion, Demotion, Rifed, Harassment, Unemployment & Workman's Compensation.

Representation by former Hearing Examiners

*Administrative Law Judges*

Washington DC 543-7870
24 Hours ..... 863-2292

(Emphasis added.)

6. Respondent regularly distributes business cards that read as follows: SIMON BANKS, J.D. (202) 863 2292 *Adm. Trial Advocate* (202) 543-7870 JOB PROTECTORS
Hearing Examiners, Lobbyists, Mediators Consultant Representation at: EEOC, Human. Rights, MSPB, OEA, SBA, DOL, Rent Control Grievance Proceedings, Unemployment Comp., U.S. Congress, Minority Business
Lobbyist One Washington Square Bldg., P.O. Box 65486
Washington, D.C. 20035. (Emphasis added.)

7. Respondent's witnesses testified that he distributed a firm resume which reads as follows:

This is to acquaint you with Job Protectors and inform you of the services we provide. Job Protectors consist of former Hearing Examiners and EEO officers before whom law firms
have represented their respective employer/employee clients in connection with claims of discrimination, harassment, et cetera. Hearing Examiners have also been known as *Administrative Law Judges.* Each of our former Hearing Examiners, *[advocate-representatives] possess law degrees* and are skilled and experienced in representing aggrieved employees before EEOC, Offices of Civil Rights; MSPB, grievance proceedings and adverse action matters. Please feel free, to recommend to us any past or present employee who feels he/she has been treated unfairly and/or in a disparate manner.

Our card is enclosed for your reference. Also, the enclosed circular may be posted at your discretion.

We maintain strict confidentiality in connection with all matters. Further, we also represent aggrieved employees at unemployment compensation appeal hearings.

(Emphasis added.) 8. Petitioner and Respondent presented evidence that Respondent used letterhead stationery which described Job Protectors as: *administrative hearing advocates;* hearing examiners; *advocates;* mediators; arbitrators; lobbyists; and personal consultants who have been consultant representatives at: EEOC; Human Rights; MSPB; OEA; SBA-Rent Control; grievance proceedings; unemployment compensation; United States Congress; and Minority Business Lobbyist. (Emphasis added.)

9. Petitioner presented evidence that respondent distributed to potential clients a copy of a *Washington Post* newspaper article identifying him as an "attorney," and a letter introducing Job Protectors and identifying them as "administrative law judges."

10. Petitioner and respondent presented evidence that respondent regularly presented to clients for their perusal and signature a disclosure statement, which reads as follows:

**DISCLOSUREOF RESENTATIVE CAPACITY**

I, _, hereby acknowledge that I have been advised that Job Protectors/Administrative Hearing Advocates is not a law firm and is not licensed to practice law. I further acknowledge that I have *been advised that Simon Banks, Juris Doctor, is not licensed to practice law, and that Simon Banks is ac former chief Hearing Examiner* authorized to hear, preside over and decide employment discrimination cases, grievance hearings, and rent control cases.

I have been further advised that from 1975, Simon Banks, J.D., has been authorized to convene and conduct trial-type hearings over [EEO] employment cases as chief hearing examiner, before whom attorneys and major law firms have represented litigants, tried, and argued cases on behalf of their respective clients in matters involving discrimination in employment, on account of age, race, sex, sexual harassment, handicapped status, seniority, housing, public accommodations, retaliation, promotion, evaluation, housing, and matriculation.

I further acknowledge that I have been advised that Simon Banks, J.D. was also appointed Chief (Hearing Examiner) of Eviction Adjudication, in 1978 to hear and decide issues and cases in connection with D.C. Rent Control Law. I have been advised that Simon Banks, J.D. became a member of the *National District Attorneys Association* in 1973 and that in 1975 Simon Banks was appointed a Founding Member of the World *Association of Lawyers.* That Simon Banks received honors from the National Association of Black Manufacturers, Blacks in Government and the World Conference of Mayors, and the District of Columbia Government, et cetera, for his services. I am further advised, that Job Protectors/ Administrative Hearing *Advocates, is* authorized to represent me before The Equal Employment Opportunity Commission, The Office of Human Rights, the D.C. Office of Employee Appeals, and the Merit System Protection Board, and in any of the various state EEOC Office and Commissions, as a consultant representative. DATE (Emphasis added.)

11. Petitioner presented evidence that respondent has represented persons other than himself before federal and District of Columbia administrative agencies, including: the Equal Employment Opportunity Commission ("EEOC"); the United States Merit Systems Protection Board ("MSPB") ; and the District of Columbia Office of Human Rights.

12. Three witnesses far respondent who are members of the lay public untutored in the law and whom respondent represented before federal or District of Columbia administrative agencies, testified that they received, read and signed the disclosure statement, supra, paragraph 10. They also testified that as a result of the disclosure statement, they knew that in employing respondent they were not thereby employing a licensed member of the District of Columbia Bar.

13. Several witnesses for petitioner who are members of the lay public untutored in the law and whom respondent represented before federal or District of Columbia administrative agencies, testified that their initial contacts with respondent regarding their employment problems were prompted by his advertisements in the Wash*ington* Post or on the radio. Each initially met with respondent assuming, from the nature of the services offered and the references to his qualifications in the advertisements, that he was a lawyer licensed to practice. Not only did he fail to dispel their misimpressions that he was qualified to practice law, but he encouraged the misimpressions by means of the firm resume, business cards, and verbal and written descriptions of his qualifications as demonstrated by his employment history and past and present organizational memberships. These witnesses acknowledged their ignorance of exactly what qualifies one to be an attorney entitled to practice law in the District of Columbia. Additionally, all but one admitted that the Disclosure of Representative Capacity forms presented by respondent bore their signatures, but either did not remember ever seeing or signing the statement, were confused by its content which did not convey to them that respondent was not qualified to practice law in the District of Columbia, or were not given the statements until after respondent had filed their respective complaints.

14. Dorothy Evans and Barbara Beverly, former receptionists for respondent, testified that he instructed them not to volunteer that he was not an attorney licensed to practice law in the District of Columbia, and if directly asked whether respondent was a lawyer or if Job Protectors was a law firm, to state that all

members of the firm had law degrees and were former administrative hearing judges and that Job Protectors was a *consulting firm*. Beverly testified that when she was directly asked whether respondent was admitted to practice law in the District of Columbia, she would tell the truth.

15. Petitioner presented evidence that respondent represented to prospective clients: that he could handle cases in a court of law all the way to the Supreme Court; that he had never lost a case; that Job Protectors was his firm with a number of coworkers; that he had represented such people as John Erlichman and Jim Brown; that he had worked on the Watergate team; and that he was a former hearing examiner, also known as an administrative law judge, an administrative trial advocate, an in-house counsel, a founding member of the World Council (or Association) of Lawyers, and a member of the National District Attorneys Association.

16. On at least two occasions in May of 1987, in connection with his representation of Paul Slappy, respondent failed to state that he was not an attorney when it was obvious that others were under the impression that he was an attorney, and in one instance, by failing to do so, fostered the false impression that he was licensed to practice law in another jurisdiction.

17. A witness for respondent testified that the titles "administrative law judge" and "hearing examiner" are used synonymously and interchangeably at the Rental Accommodations Office in reference to hearing examiners.

**FINDINGS OF FACT**

Based on the evidence presented and the opportunity to observe the witnesses and evaluate their testimony, the court makes the following *findings of* fact:

1. From September of 1985 until the date of the hearing in this case, respondent, who is not now and never has been an active member of the District of Columbia Bar, has engaged in a continuous course of conduct designed to create the public and individual misimpression that he has been duly qualified to practice law in the District of Columbia. Such misimpression has been generated and fostered by respondent through various media, including advertisements in the yellow pages, newspapers, and on the radio, and representations made in resumes, business cards, stationery, and other verbal and written descriptions of his business.

2. The general public, as represented by the several witnesses who testified in this matter, was reasonably led by respondent's conduct to erroneously believe that respondent was in fact a licensed member of the District of Columbia Bar. The general public does not understand that in order to practice law in the District of Columbia, one must not only graduate from law school, but also pass a bar examination and be certified as morally fit to be a member of the Bar. The public assumes that if one offers "legal services" in the manner that respondent did, one must necessarily be an attorney. Moreover, the public is likely to assume that one must be an attorney prior to *attaining such* positions as "hearing examiner," "administrative law judge," "administrative trial advocate," "consultant representative," "in-house counsel," "member of the World Association of Lawyers," - and "member of the National District Attorneys Association."

3. Respondent further encouraged the false impression that he is a licensed member of the District of Columbia Bar by failing to disclose his status with respect to Bar membership to prospective and actual clients. The evidence demonstrated several situations in which respondent intentionally failed to inform interested persons that he is not in fact an attorney. Moreover, respondent's "disclosure statement," as a practical matter, did not actually alert most of his clients that he was not licensed to practice law in the District of Columbia. Several witnesses testified that they either did not remember signing the disclosure statement in question, or did not know what the disclosure statement was. Thus, to the extent that the disclosure statement was intended to clarify and disclose respondent's position with respect to the licensed practice of law, it did not have its intended effect.

**LEGAL DISCUSSION**

1. At the onset of this proceeding, it was established that the only issue before the court was whether respondent had held himself out to the public as being a qualified member of the District of Columbia Bar by creating, or fostering, the illusion that he is licensed to practice law in the District of Columbia. The Unauthorized Practice Committee recognized that the question of whether respondent's actual representation of persons in federal administrative proceedings was a violation of Rule 49 (b) was not before the court. *See* D.C. App. R. 49 (c) (4) . The Committee also acknowledged that the court did not have before it the question of whether respondent's actual representation of persons before District of Columbia administrative agencies which permit

nonattorney representation is a violation of Rule 49 (b).6/ Nor does the court address in this proceeding the issue of whether representation by a non-attorney before District of Columbia administrative agencies whose published 6/This issue is presently on appeal before a division of this *court. See Brookens v. Committee on Unauthorized Practice of Law,* Nos. 86-1181 and 86-1182. rules do not permit such representation is a violation of Rule 49 (b).7/ 2. Violations of District of Columbia Court of Appeals Rule 49 (b) constitute the unauthorized practice of law and are subject to injunctive relief. *See* D.C. App. R. 49 (d). The rule provides, in pertinent part:

(b) Practice of law in the District of Columbia.

(1) No person shall regularly engage in the practice of law in the District of Columbia or in any manner hold out as authorized or qualified to practice law in the District of Columbia unless enrolled as an active member of the Bar.

(2) No person, firm, association, bank or corporation shall, in the District of Columbia, advise or counsel any person on matters affecting legal rights, or practice or appear as an attorney at law for a person other than such person in any court, or furnish an attorney or attorneys to render legal services, or hold out to the public as being entitled to practice; or in any manner assume to be an attorney at law, or assume, or use or advertise the title of lawyer, attorney or counselor, or any equivalent title, *in*
such manner as to convey the impression that such person is entitled to practice law, or *in* any manner advertise that such person either alone or together with any other person or persons maintains an office for the practice of law

7 *See* Petitioner's Proposed Findings of Fact and Conclusions of Law, at Paragraph This issue was not litigated at the hearing in this matter, and the court declines to decide it here. The issue is, however, before a division of this court in the *Brookens* case. *See supra* note 6. in the District of Columbia, without being an enrolled active member of the Bar.

> (3) The practice of law as used in this rule shall include, but is not limited to, appearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any other instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting the disposition of property or decedents' estates, or any pleadings of any kind

in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other matters of law.

3. D.C. App. R. 49 (b) does more than merely prohibit persons from stating they are a licensed member of the District of Columbia Bar when in fact they are not. The rule also provides that no person shall "hold out to the public as being entitled to practice; or in any manner assume to be an attorney at law, or assume, or use or *advertise the title of lawyer, attorney* or *counselor, or any equivalent title,* in such a manner as to convey the impression that such person is entitled to practice law . . . without being an enrolled active member of the Bar." D.C. App. R. 49 (b) (2) (emphasis added).

Respondent claims that he is entitled to represent himself as a "lawyer" because he is a law school graduate. However, Rule 49 (b) plainly prohibits respondent from using or advertising the "title of lawyer." Id. This prohibition is consistent with the statutes of no fewer than fourteen states that expressly provide that persons may not hold themselves out as lawyers or use the title " lawyer" unless they are licensed members of the state bar. Respondent's graduation from law school does not entitle him to call himself a lawyer. "[T]he words `lawyer' and `attorney' are synonymous, and hence anyone advertising himself as a lawyer holds himself out to be an attorney, attorney at law, or counselor at law." *In re Page, 257* S.W.2d *679, 684 (Mo. 1953)* (quoting *People ex rel. Colorado Bar Ass'n v. Taylor, 138 P. 762, 763 (Colo. 1914)) ; see also Merrick v. American Security & Trust Co., 71 App. D.C. 72, 74 107* F.2d *271, 273 (1939)* . It has recently been held that a law school graduate is not a lawyer because neither the commonly accepted meaning of the term nor its technical definition allow such usage. *Binkley v. People, 716* P.2d 1111, 1113-14 *(Colo. 1986)* . *The* court held that both the commonly accepted meaning of "lawyer" and its technical definition denote a person licensed to practice law. Id. The argument that the term "lawyer" includes unlicensed law school graduates was specifically rejected. In the words . of the court The common definition of "lawyer" is "a specialist in or a practitioner of law"-that is, one *See* Ala. Code § 34-3-1 (1985) ; Conn. Gen. Stat. Ann. § 51-88 (West 1985) ; Ga. Code Ann. § 15-19-51 (1985) ; La. Rev. Stat. Ann. § 37 :213 (West 1974) ; Mich. Comp. Laws Ann. § 600.916 (West 1981) ; N.J. Stat. Ann. § 2A :170-78 (West 1981) ; N.M. Stat. Ann. § 36-2-28 (1984) ; N.Y. Judiciary Law § 478 (McKinney 1983,

1986 Supp.) ; Ohio Rev. Code Ann. § 4705.07 (Baldwin 1982) ; 42 Pa. Cons. Stat. Ann. § 2524 (Purdon 1981) ; R.I. Gen. Laws § 11-27-1 (1981) ; Utah Code Ann. § 78-51-25 (1987) ; W. Va. Code Ann. § 30-2(1986) ; Wise. Stat. Ann. § 256.30 (West 1982). Additionally, the statutes of four other states indicate that one is not a lawyer unless licensed to practice law. *See Fla.* Stat. Ann. § 454.23 (West 1981) ; Ind. Code Ann. § 33-1-1.5-1 (Burns, 1975, 1980 Supp.) ; Minn. Stat. Ann. § 481.02 (West 1971, 1987 Supp.) ; and N.C. Gen. Stat. § 84-4 (1985). whose profession "is to conduct lawsuits for clients or to advise as to the prosecution or defense of lawsuits or as to legal rights and obligations in other matters." *Webster's Third New International Dictionary* 1280 (1971) . As long ago as 1908 this court observed that the term "lawyer" is generally understood to refer to a professional person "legally authorized to appear for and represent clients who are parties to causes in courts of record." *People ex. rel. Colorado Bar Association v. Erbaugh,* 42 Colo. 480, 487-88, 94 P. 349, 352 (1908) . This commonly accepted meaning of the term refutes the notion that a lawyer is anyone who has studied law, even though he or she may not have fulfilled the qualifications necessary to engage in the practice of law. Id. at 1113-14. We agree with the Colorado Supreme Court that "lawyer" is generally understood as synonymous with "attorney," and we therefore reject the argument that respondent is properly deemed a "lawyer" despite not having qualified to practice law in any jurisdiction.

4. The evidence also shows that respondent represents to the public that he is a former administrative law judge because he served as a hearing examiner for the District of Columbia Office of Human Rights and the District of Columbia Rental Accommodations Office. Petitioner contends that the public is thereby misled into believing that respondent is licensed to practice law in the District of Columbia, It is true that in the context of federal agencies, "hearing examiner" may be synonymous with "administrative law judge," as is demonstrated by a 1978 amendment to the Administrative Procedure Act which substituted the latter term for the former. Com*pare 5 U.S.C.* § 556 (b) (3) (1977) with id. (Supp. 1987) . Evidence of common parlance, however, is not tantamount to evidence that District of Columbia agencies have adopted this synonymity of titles. To the contrary, both the Rental Accommodations Office and the Office of Human Rights continue to expressly refer to respondent's

former positions as "hearing examiner." *See* D. C. Code § 1-2551 (1987) ; id. § 45-2514 (d) (1986) . Thus, respondent's use of "administrative law judge" is factually inaccurate, and we find that its use in advertisements, resumes, business cards, stationery and other firm descriptions is reasonably calculated to mislead the public into believing that respondent is necessarily licensed to practice law. Accordingly, we conclude that respondent should be prohibited from holding himself out to the public as a former administrative law judge.

We similarly find objectionable respondent's use, or the manner of use, of such terms and titles as administrative trial advocate,9/ in-house counsel, member of the World Council (or Association) of Lawyers and member of the National District Attorneys Association. Respondent uses the foregoing terms and titles in advertisements, resumes, business cards and stationery in connection with his representation before federal and District of Columbia administrative agencies. As the hearing testimony showed, 9 The term "advocate," especially when used in conjunction with the word "trial" denotes that one is licensed to practice law. This conclusion is supported by **Black's Law Dictionary 51 (5th ed. 1979) which defines "advocate"** as:

One who assists, defends, or pleads for another. One who renders legal advice and aid and pleads the cause of another before a court or a tribunal, a counselor. A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court. An assistant; adviser; a pleader of causes.

such use leads, and is intended to lead, the layman to incorrectly assume that respondent is qualified to practice law in the District of Columbia. Accordingly, respondent's use of these terms must also be prohibited unless they are currently factually accurate; and, even if factually accurate, they may not be used in such a way as to reasonably create the impression he is qualified to practice law in this jurisdiction.

5. Respondent contends that notwithstanding any other express or implied representations, the Disclosure of Representative Capacity Statement that some of his clients execute, *see* Summary of Evidence, at paragraph 10, dispels any false impression about his capacity and authorization to practice law. We disagree. The disclosure statement, reasonably viewed, actually fosters false impressions. For example, the very sentence of acknowledgement that respondent is not licensed to practice law contains references to *respondent's former* positions which a layman would assume

were predicated on a license to practice law. The overall effect of the statement thus encourages the very misimpressions that it purports to *dispel. This is* shown by the testimony of several witnesses who either did not remember having seen or signed the statement, or were confused by its content. That the general public represented in this proceeding concluded from all the circumstances that respondent was duly qualified to practice law in this jurisdiction, despite his "disclosure" to the contrary, is demonstrated by the following credited hearing testimony

> I thought that you [Respondent] were a lawyer. I thought that you - were an attorney. I thought, looking at the business card, that these were all the specific areas [in which] your expertise lied [sic]. I should have questioned "J.D." I

thought maybe that was a nickname or something. I didn't know what J.D. was. I should have questioned some of the stuff, but what I was more concerned about, emotionally distraught about . . . where do I fit in under all these little specifics that he does and the unemployment and the grievance and the human rights and that kind of thing. Similarly, another credited witness, when asked whether she thought she was being represented by a licensed member of the District of Columbia Bar, testified:

[ W ]hen I see something that says legal services, I don't question whether a person is licensed. I say: this person can help me with my problem, which apparently is a legal problem because it's described here under legal services. I'm not, so sophisticated to know the professional certification that lawyers are supposed to have, so I don't think in terms of [whether] it's somebody; approved by the [Bar]. We think that in view of the credited testimony elicited at the hearing, there can be little question but that the ;' public was misled by respondent's representations, not withstanding the disclosure statement. If a disclosure statement encourages the very misimpressions that it pretends to dispel, then nothing has effectively been disclosed.

CONCLUSIONS

Because respondent is not and never has been a member of the District of Columbia Bar, or any other Bar, and in light of the evidence of his overall pattern of behavior of generating and fostering the illusion that he is a qualified member of the District of Columbia Bar, and his failure to remove that illusion, this court concludes that respondent has violated D.C. App. R. 49(b). The court further concludes that (1) that respondent should be enjoined from future violations of Rule 49 (b) ; and (2) that the

accompanying Judgment and Order, in addition to prohibiting respondent from using specific titles, should mandate that because respondent's representation of others in proceedings before federal and District of Columbia administrative agencies is quasi-judicial in nature, he disclose in all advertising materials, business cards, firm resumes, and stationery, etc., in an unequivocal and unmistakable manner that he is not licensed to practice law in the District of Columbia.

An affirmative and unequivocal disclosure is necessary in this case **because the titles and terms used by respondent to describe his qualifications, irrespective of the factual accuracy of such representations,** have been so presented as to deceive the public. It requires that the court place the burden on respondent to dispel any mistaken impression that he is a qualified member of the District of Columbia Bar. Such affirmative disclosure is also necessary in this case in order to effectuate the purpose of Rule 49 (b) which is to protect the layman who seeks legal services. It should be borne in mind that respondent has already violated express terms of the settlement agreement he previously entered into with the Unauthorized Practice Committee.

The essence of Rule 49 (b) is its recognition that a person in need of legal, services is and ought to be entitled to have confidence that one whose conduct and activity give rise to the impression that he is authorized to practice law in the District of Columbia is, in fact, so authorized. Hence, the Rule as applied in this case requires affirmative disclosure in order that the public be protected. The public should not be required to undertake the task of determining the factual accuracy of representations made by those who effectively hold themselves out to be qualified to practice law.'[10] Such a requirement would place an unreasonable and unnecessary burden on the public. An appropriate Order is being entered simultaneously with these findings and conclusions.

BY THE COURT:

/s/ George R. Gallagher
GEORGE R. GALLAGHER,
Senior Judge.

10Although the Committee requested, in addition to the injunctive relief granted by the accompanying order and Judgment, an accounting of all fees received by respondent, restitution of all fees received, and notice by respondent by advertisement in the *Washington Post* and by letter to all clients that he is not an attorney authorized to practice law in the District

of Columbia, we find such relief unwieldy in this particular case A termination of respondent's misleading activities appears to be the realistic remedy in the circumstances of this case. This includes a requirement that there be a written notification to his clients presently being represented by him that he is not qualified to practice law in the District of Columbia even though he was previously a Hearing Examiner in the District of Columbia.

District of Columbia
Court of Appeals
**No. 95-BG-43**
IN RE: SIMON BANKS,
DEC 11 1995
Petitioner.
BEFORE: Ferren and Ruiz, Associate Judges; and Pryor, Senior Judge.

O R D E R

On consideration of petitioner's motion to stay the order of the per curiam panel and to stay the order granting attorney's fees to Davis Wright Tremaine and Stuart Pierson, and The Committee on Unauthorized Practice of Law response to petitioner's motion to stay the order of the per curiam panel and to stay the order granting attorney's fees to Davis Wright Tremaine and Stuart Pierson, it is

ORDERED that the petitioner's motion is denied.

PER CURIAM
Copies to:
Mr. Simon Banks
468 M Street, S.W.
Washington, D.C. 20024
Stuart F. Pierson, Esquire
Chair
Committee on Unauthorized
Practice of Law

District of Columbia Court of Appeals
APR 19 1990
No. 95-BG-43
IN RE: SIMON BANKS,
Petitioner,
BEFORE: Wagner, Chief Judge; Ferren, Terry, Steadman,Schwelb,Farrell, King, Ruiz and Reid, AssociateJudges.
O R D E R

On consideration of petitioner's petition for rehearing en banc; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

*Associate Judge Steadman has recused himself from this case.

Copies to:
Mr. Simon Banks
468 M Street, S.W.
Washington, D.C. 20024
Stuart F. Pierson, Esquire
Chair
Committee on Unauthorized
Practice of Law

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**
**Washington Field Office**
**1400 L Street, N.W. ., Suite -04**
Washington, D.C. 20001
**PEI: (302) 275-7377 (.02) 275-75 I3 FAX (202) 275-6834**
February 10, 1995
VIA FACSIMILE TRANSMISSION 202-554-1115
Dr. Simon Banks
Job Protectors
468 M Street, S.W.
Washington, D.C. 20024
Dear Dr. Banks:

I received a copy of Judge Richard A. Levies January 13, 1995 order in In Re Simon Banks, D.C.C.A. No. 92-BG-652. I have asked EEOC's Office of Legal Counsel for permission to bar you from this office, pursuant to the Judge's *opinion* at page 47 and footnote 32.

Pending a response to that request from headquarters, I want to alert you to the way in which we will handle your further representation of clients in this offices. When you enter your appearance *on* behalf of a charging party, federal *complainant, or* a respondent, we will scrutinize your materials to ensure that you are in strict compliance with the terms of Judge Levies injunction, set out at pages 48 to 51 of the January 13 order.

If we find that you are not, we will send a copy of the January 13, 1995 order to the client and ask for a written statement within 30 days as to whether that individual wishes to continue with you as the representative. You will be copied on any such letter.

We will then proceed in accordance with the party's wishes. If the party does not respond, we will interact with the party as if the individual is unrepresented until such time as the party submits a written statement informing us otherwise.

Sincerely,

Susan Buckingham Reilly

Director

**DISTRICT OF COLUMBIS COURT OF APPEALS**

**No. 87-97**

**IN RE: SIMON BANKS, Respondent.**

FILED MAY 26, 1987

A member of the Bar of the
District of Columbia Court of Appeals
(Argued May 12, 1987 Decided May 26, 1987)

MEMORANDUM OPINION AND JUDGMENT

This cause came on to be heard on (a) respondent's motion for summary judgment; and (b) petitioner's cross-motion for summary judgment, with oppositions thereto.

It appears that there are genuine issues of fact with respect to both motions. Accordingly, respondent's motion for summary judgment and petitioner's cross-motion for summary judgment will not be granted.

Based upon the showing made thus far in this proceeding, it is concluded that a temporary restraining order should be issued forbidding respondent, Simon Banks, from (1) practicing law in the District of Columbia; and (2) giving the public the impression that his is authorized to practice law in the District of Columbia, in violation of D.C. App. R. 49 (b), which provides:

(b) Practice of law in the District of Columbia.

(1) No person shall regularly engage in the practice of law in the District of Columbia or in any manner hold out as authorized or qualified to practice law in the District of Columbia unless enrolled as an active member of the Bar.

(2) No person, firm, association, bank or corporation shall, in the District of Columbia, advise or counsel any person on matters affecting legal rights or practice or appear as an attorney at law for a person other than such person in any court, or furnish an attorney or attorneys to render legal services or hold out to the public as being entitled to practice; or in any other manner assume to be an attorney at law, or attorney or counselor, or any equivalent title, in such manner as to convey the impression that such person is entitled to practice law, or in any manner advertise that such person either alone or together with any other person or persons maintains an office for the practice of law in the District of Columbia, without being an enrolled active member of the Bar.

(3) The practice of law as used in this rule shall include, but is not limited to, appearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any to her instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting disposition of property or decedents' estates, or any pleadings of any kind in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other maters of law.

If further appears that this proceeding should be set promptly for the hearing of evidence on (a) the request for a preliminary and permanent injunction; (b) an accounting by respondent, Simon Banks, of all fees received; (c) restitution of all fees received; and (d) public notice by respondent that his is not authorized to provide legal services in the district of Columbia.

Accordingly, it

ORDERED and ADJUDGED that respondent's motion for summary judgment is hereby denied, and it is

FURTHER ORDERED that petitioner's cross-motion for summary judgment is hereby denied, and it is

FURTHER ORDERED that petitioner's request for a Temporary Restraining Order is hereby granted (see accompanying order), and it is

FURTHER ORDERED that the hearing on the request for preliminary and permanent injunctions will commence promp0tly at 1:30 o'clock on June 15, 1987, in the courtroom of the District of Columbia Court of

Appeals, Sixth Floor, 500 Indiana Avenue, N.W. Washington, D.C. before Judge Gallagher.

BY THE COURT
GEORGE R. GALLAGHER
Senior Judge

Copies to:
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James P. Schaller, Esquire
Chairman, Committee on Unauthorized
Practice of Law
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Washington, D.C. 20036
Jay A. Resnick, Esquire
Executive Secretary,
Committee on Unauthorized Practice
of Law
500 Indiana Avenue, N.W.
Washington, D.C. 20001

**DISTRICT OF COLUMBIA**
**COURT OF APPEALS**

| | | |
|---|---|---|
| **In Re Simon Banks** | } | **Court of Appeals** |
| **(1992)** | } | **No. 92-SP-652** |
| | } | **Judge Richard A. Levie** |

**ORDER #6**
**(December 9, 1993)**

MEMORANDUM AND ORDER DENYING RESPONDENT'S MOTION TO VACATE THE INJUNCTION AND RESPONDENT'S MOTION FOR HEARING

PROCEDURAL HISTORY

On February 11, 1987, the District of Columbia court of Appeals committee on the Unauthorized Practice of Law (the Committee),

pursuant to D.C. App. R. 49(d), petitioned the District of Columbia Court of Appeals for an Order to Show Cause why Respondent (Mr. Banks) should not be held in contempt for violated D.C. App. R. 49(b). The Committee also sought an order to enjoin Mr. Banks permanently for violated Rule 49(b).[1] This case was assigned to Senior Judge Gallagher, and designated case No. 87-SP-97. The Committee later amended its petition and sought only equitable relief. In response, Mr. Banks filed in that proceeding, numerous procedural and substantive motions, which challenged the validity of the proceedings in No. 87-SP-97.

After an evidentiary hearing Judge Gallagher found Mr. Banks in violation of Rule 49(b) and issued an Injunction (1987 Injunction) permanently enjoining Mr. Banks from committing those acts which the Court found to constitute the unauthorized practice of law. In re Banks, 561 A.2d 158, 167-168 (D.C. 1987).

On November 30, 1987, Mr. Banks filed a Petition for Rehearing By Tree-Judge Panel. The Court of Appeals treated this Petition as an appeal of the Order in No. 87-SP-97, and assigned the appeal case 87-SP-1339. Over the next two years, Mr. Banks filed numerous motions challenging the validity of the proceedings which culminated in the permanent injunction, and the validity of the 1987 Injunction itself. In each and every instance, the motion was denied.

Believing that Mr. Banks continued to engage in the unauthorized practice of law in violation of the 1987 Injunction, The Committee, on May 29, 1992, petitioned the District of Columbia Court of Appeals for an Order to Show Cause why Mr. Banks should not be held in contempt for violation of the 1987 Injunction. The petition for an Order to Show Cause was designated case No. 92-SP-652. On October 15, 1992, the Court

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[1] D.C. App. R. 49 (b), in pertinent part, provides that:

(1) No person shall regularly engage in the practice of law in the District of Columbia or in any manner hold out as authorized or qualified to practice law in the District of Columbia unless enrolled as an active member of the Bar.

(2) No person ...shall... advise or counsel any person on matters affecting legal rights ...or hold out to the public as being entitled to practice ... or assume or use or advertise the titles of lawyer, attorney or counselor or any equivalent title, in such manner as to convey the impression that such person is entitled to practice law ... without being an enrolled active member of the Bar.

of Appeals issued an Order to Show Cause why Mr. Banks should not be held in contempt for violating the 1987 Injunction. Instead of responding within 20 days as the Court ordered, on October 29, 1992, Mr. Banks filed Respondent's First Motion to Vacate the Injunction.[2]

DISPOSITION OF THE MOTION

Mr. Banks claims that the 1987 Injunction should be vacated because the 1987 proceedings and the 1987 Injunction were tainted by numerous violations of his constitutional rights and violation of his statutory rights.[3] In its Opposition, the committee asserts that these challenges to the 1987 Injunction must fail because the doctrine of res judicata or claim preclusion,

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[2] Although Mr. Banks titled the present Motion Respondent's First Motion to Vacate the Injunction, it is a misnomer. The instant Motion is actually the second Motion to Vacate Mr. Banks has made. In cas No. 87-SP-1339, Mr. Banks filed a motion entitled Appellant Simon Banks Motion to Vacate and/or Dissolve the Injunction, which was denied in an Order dated March 21, 1989.

[3] Mr. Banks does not indicate under what authority he requests the 1987 Injunction be vacated. This Court, however, will treat the motion as one made pursuant to Super. Ct. Civ. R. 60(b)(6), which permits a court to grant relief from a final judgment or order "for any other reason justifying relief ..." The civil Rules of the Superior Court govern the instant proceedings. D.C. app. R. 49(d).

The decision to grant or to deny such a motion falls within the trial court's discretion. Ohio Valley Constr. Co., Inc. v Dew, 354 A.2d 518, 521 (D.C. 1976); Jones v. Hunt, 298 A.2s 220, 221 (D/C/ 1972). The motion is granted in "exceptional circumstances" and in "unusual and extraordinary situation." Clement v. District of Columbia Dept. of Human Services, 629 A.2d 5, 1219 (D.C.1993).

It is questionable whether the claims raised in the Motion to Vacate rise to the level of "exceptional circumstances" warranting relief from the judgment. In any even, these claims cannot sustain the present Motion because they are barred under the doctrine of claim preclusion. Mr. Banks' previous Motion to Vacate the 1987 Injunction, and his numerous challenges on appeal, all of which were denied, are based on substantially the same claims he asserts in the present motion. See pp. 5-13, infra. Furthermore, it is well settled that a motion under Rule 60(b) for relief from a judgment cannot substitute for an appeal of that judgment. Twelve John Does v. District of Columbia, 841 F.2d 1133, 1141 (D.C. Cir. 1988); Donovan v. Sovereign Sec. Ltd, 726 F.2d 55, 56 (2d Cir. 1984).

bars Mr. Banks from raising these arguments. (Committee's Response to Motion to Vacate at 15-16). The Committee claims that Mr. Banks raised these exact claims in his many prior challenges to the 1987 Injunction. Id. Under the doctrine of claim preclusion, the entry of a valid final judgment on the merits prevents the parties from relitigating claims which were raised, or which could have been raised, in the first proceeding. Faulkner v. Govt. Employees Ins. Co., 618 A.2d 181, 183 (D.C. 1992); Gilles v. Ware, 615 A.2d 533, 538-539 (D.C. 1992); Crane v. Crane, 614 A.2d 935, 938 (D.C. 1992). The doctrine prevents parties from splitting a transaction into several theories of recovery, so that if a party fails to succeed on one theory, that party may not assert the same claim under a different theory in a subsequent action. Gilles, supra, 615 A.2d at 539.

After analyzing the many claims raised by Mr. Banks in the present Motion to Vacate and those raised through the various motions filed in case No. 87-SP-97 and in case No. 87-SP-1339, this Court finds that Mr. Banks' current attack on the 1987 Injunction is based on the same claims which were raised and finally decided against him in the two previous cases. The following claims made in support of vacating the 1987 Injunction are, therefore, barred by the doctrine of claim-preclusion.

Violation of Due Process[4]

No. 92-SP-652 Motion to Vacate at 1-2, 4-5, 14-15[5] Reply to Opposition at 1, 4-5, 10, 12-14 No. 87-SP-97 Motion to Stay at 5, 8 Denied in 6/3/87 Order No. 87-SP-97 Motion to Stay at 5, 8 Denied in 12/22/87 Order No. 87-SP-1339 Affidavit Supporting Motion to Stay at 6 Denied in 1/31/89 Order

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[4] The following is a list o claims repeatedly made by Mr. Banks and the page references to the filing of Mr. Banks in which those arguments were all Orders referred to in case No. 87-SP-97 were issued by Judge Gallagher, while all Orders referred to in case No. 87-SP-97 were issued by Judge Gallagher, while all Orders referred to in case No. 87-SP-1339 were issued by a three judge division of the District of Columbia Court of Appeals.

[5] Respondent's first Motion to Vacate the Injunction and Respondent's Reply to the Petitioner's Opposition to Respondent's Motion to Vacate the Injunction, which are referenced repeatedly in this Memorandum and Order, appear to be pending because they are the subject of and are decided in the instant Memorandum Order.

Motion for Reconsideration or for Rehearing En Banc at 2, 9, 13 18-21, Denied in 3/10/89 Order Motion to Vacate or Dissolve the Injunction at 5, 29, 34, 36 Denied in 3/21/89 Order
Opposition to Renewed Motion to Publish at 11, and Points and Authorities Supporting the Opposition at 5, 29, 34, 37 Denied in 3/21/89 Order Appeal to the Court En Banc at 4-5 Denied in 4/21/89 Order Motion for Injunctive Relief a I Denied in 4/21/89 Order Petition for an Order to Show Cause at 5 Denied in 5/25/89 Order Prosecutorial Misconduct No. 92-SP-652 Motion to Vacate at 6-7, 16-17
No. 87-SP-97 Supplemental Opposition to Petition for Injunction at 1-2, 11[6] Motion to Stay at 10 Denied in 6/3/87 Order
No. 87-SP-1339 Opposition to Motion to Strike at I-3 Denied in 5/16/88 Order Opposition to Strike Amended Designation of Record at 7, 10-11, 12, 14 Denied in 1/31/89 Order
Motion to Provide Appellant with Documents Secretly Withheld at 4 Denied in 1/31/89 Order Motion for Reconsideration or for Rehearing En Banc at 2-3, 5, 10, 14, 18 Denied in 3/10/89 Order
Motion for Declaratory Judgment at 11 Denied in 3/21/89 Order
Motion to Vacate or Dissolve the Injunction at 25, 29 Denied in 3/21/89 Order Motion for mandamus at 8-9 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 25, 29 Denied in 3/21/89 Order
Petition for Order to Show Cause at 1-6 Denied in 5/25/89 Order
Petition for Rehearing En Banc at 1 Denied in 2/28/90 Order
Judicial Bias / Abuse of Discretion
No. 92-SP-652 Motion to Vacate at 3-4, 9-12
Reply to Opposition at 5-11, 15
No. 87-SP-1339 Motion to Stay at 2-3 Denied in 12/22/87 Order
Opposition to Motion to Strike Amended designation of Record at -6, 9-10 Denied in 1/31/89 Order Motion for Reconsideration or for Rehearing En Banc at 2-12, 17 Denied in 3/10/89 Order
Motion for Declaratory Judgment at 6-7 Denied in 3-21-89 Order
Motion to Vacate or Dissolve the Injunction at F-H, 22, 25-28, 32, 34 Denied in 3/21/89 Order Motion for Mandamus at 7-8, 10-12 Denied in 3/21/89 Order Opposition to Renewed Motion to Publish at 1-3, 6-7, 9-11, and Points and Authorities in Support of Opposition at 22, 25-28, 32, 34 Denied in 3/21/89 Order Appeal

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[6] Judge Gallagher considered and rejected this Opposition when it found Mr. Banks in violation of Rule 49(b) and issued the 1987 Injunction. See In re Banks, 561 A.2d 158 (D.C. 1987).

to Court En Banc at 1-5 Denied in 4/21/89 Order Motion for Injunctive Relief at 1-3 Denied in 4/21/89 Order Petition for Rehearing En Banc at 1 Denied in 2/28/90 Order First Amendment Violations No. 92-SP-652 Motion to Vacate at 2-3, 6-7, 14 Reply to Opposition at 12-13 Memorandum in Support of Respondent's First Amendment Right to Advertise at 1-2 No. 87-SP-97 Supplemental Opposition to Petition for Injunction at 8-9, 12 No. 87-SP-1339 Motion to Stay a 1 Denied in 12/22/87 Order Motion for Reconsideration or for Rehearing En Banc at 8 Denied in 3/10/89 Order Motion for Declaratory Judgment at 10 Denied in 3/21/89 Order Motion to Vacate or Dissolve the Injunction 27, 29-30 Denied in 3/21/89 Order Motion for Mandamus at 5 Denied in 3/21/89 Order Opposition to Renewed Motion to Publish at 13, and Points and Authorities in Support at 27, 29-30 Denied in 3/21/89 Order Appeal to the Court En Banc at 6 Denied in 4/21/89 Order Motion for Injunctive Relief at I-3 Denied in 4/21/89 Order Petition for Rehearing En Banc at 1 Denied in 2/28/90 Order Denial of Defense that Non-Members of the D.C. Bar May Represent Persons Before Administrative Agencies No. 92-SP-652 Motion to Vacate at 1 Reply to Opposition at 5-10 No. 87-SP-97 Motion to Stay at 6-7 Denied in 6/3/87 Order Motion for Partial Summary Judgment at 7 Denied in 5/26/87 Order No. 87-SP-1339 Affidavit in Support of Motion to Stay at 11 Denied in 12/22/87 Order Opposition to Motion to Strike Amended Designation of Record at 4-5 Denied in 1/31/89 Order Motion to Provide Appellant with Documents Secretly Withheld at 2-3 Denied in 1/31/89 Order Motion to Vacate or Dissolve the Injunction at 10-11, 25 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 10-11, 25 Denied in 3/21/89 Order Appeal to the Court En Banc at 4 Denied in 4/21/89 Order Ex Post Facto Enforcement of Rule 49 No. 92-SP-652 Motion to Vacate at 4, 7, 16 No. 87-SP-97 Supplemental Opposition to Petition for Injunction at 7 Motion to Stay at 4 Denied in 6/3/87 Order No. 87-SP-1339 Motion to Stay at 1 Denied in 12/22/87 Order Motion to Vacate or Dissolve the Injunction at 31-33 Denied in 3/21/89 Order Opposition to Renewed Motion to Publish at 2-3, and Points and Authorities in Support at 31-33 Denied in 3/21/89 Order Denial of Discovery Regarding Witnesses Against Mr. Banks No. 92-SP-652 Motion to Vacate 5-6, 15 Reply to Opposition at 1, 4-5 No. 87-SP-97 Affidavit of Simon Banks in Support of Motion to Stay at 3-4 Denied in 6/3/87 Order No. 87-

SP-1339 Motion to Provide Appellant with Documents Secretly Withheld at 1-5 Denied in 1/31/89 Order Motion for Reconsideration or for Rehearing En Banc at 7, 9-10, 12 Denied in 3/10/89 Order Motion for Declaratory Judgment at 6 Denied in 3/21/89 Motion to Vacate or Dissolve the Injunction at F, 22 Denied in 3/21/89 Order Motion for Mandamus at 3-4, 10 Denied in 3/21/89 Insufficient Evidence Supporting
the Court Order and the 1987 Injunction
No. 92-SP-652 Motion to Vacate at 12-13 Reply to Opposition at 15-42 No. 87-SP-1339 Motion to Stay at 2-5 Denied in 12/22/87 Order Opposition to Motion to Strike Amended Designation of Record at 1, 4, 6 Denied in 1/31/89 Order Motion for Reconsideration or for Rehearing En Banc at 8, 17 Denied in 3/10/89 Order Motion to Vacate or Dissolve the Injunction at 37 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 37 Denied in 3/21/89 Order Motion for Injunctive Relief at 2 Denied in 4/21/89 Order Equal Protection Violations No. 92-SP-652 Motion to Vacate at 15
Reply to Opposition at 1, 4, 12-15 No. 87-SP-97 Supplemental Opposition to Petition for Injunction at 4-5, 10-11 Motion to Stay at 7, 12, 14, and Affidavit in Support at 6 denied in 6/3/87 Order Motion for Partial Summary Judgment at 6-7 Denied in 5/26/87 Order Affidavit in Support of Motion to Stay at 6 Denied in 12/22/87 Order No. 87-SP-1339 Opposition to motion to Strike Amended Designation of Record at 12 Denied in 1/31/89 Order Motion to Provide Appellant With Documents Secretly Withheld at 4 Denied in 1/31/89 Motion for Declaratory Judgment at 12-13 Denied in 3/21/89 Order Motion to Vacate or Dissolve the Injunction at 9, 27, 37 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 9, 27, 37 Denied in 3./21/89 Order Appeal to the Court En Banc at 5 Denied in 4/21/89 Order Motion for Injunctive Relief at 1 Denied in 4/21/89 Order. Order to Show Cause at 5 Denied in 5/25/89 Order Sixth Amendment Violations
No. 92-SP-652 Reply to Opposition at 1-3 No. 87-SP-1339 Appeal to the Court En Banc at 5 Denied in 4/21/89 Order
Supremacy Clause Violations No. 92-SP-652 Reply to Opposition at 10, 14 No. 87-SP-1339 Motion to Vacate or Dissolve the Injunction at 2, 7, 28, 32-33 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 2, 7, 28, 32-33 Denied in 3/21/89 Order Motion for

Injunctive Relief at 1, 3 Denied in 4/21/89 Order
Tortuous Interference With Contracts
No. 92-SP-652 Reply to Opposition at 11 No. 87-SP-97 Supplemental Opposition to Petition For Injunction at 11 No. 87-SP-1339 Affidavit in Support of Motion to Stay at 6 Denied in 12-/22/87 Order Motion for Reconsideration or for Rehearing En Banc at 8, 12 Denied in 3/10/89 Order Motion for Declaratory Judgment at 1-8, 12 Denied in 3/21/89 Order Motion to Vacate or Dissolve the Injunction at A_H Denied in 3/21/89 Order Motion for Mandamus at 5-12 Denied in 3/21/89 Order Motion for Order to Show Cause at 4 Denied in 5/25/89 Order Respondent's Right to Refer to Himself as Former Administrative Law Judge No. 92-SP-652 Motion to Vacate at 1 Reply to Opposition at 3, 12-13 No. 87-SP-97 Supplemental Opposition to Petition for Injunction at 8-9, 12 Memo in Support of Right to Advertise at 1-8[7] Response to Reply to memo in Support of Right to Advertise at 1-6[8] Motion to Stay at 1 Denied in 12/22/87 Order 87-SP-1339 Motion to Provide Appellant With Documents Secretly Withheld at 4 Denied in 3/21/89 Order Motion for Declaratory Judgment at 9, 12 Denied in 3/21/89 Order Motion to Vacate or Dissolve the Injunction at 21 Denied in 3/21/89 Motion for Mandamus at 3 Denied in 3/21/89 Order Points and Authorities in Sup[port of Opposition to Renewed Motion to Publish at 21 Denied in 3/21/89 Order[9] In addition to its claim preclusion argument, the

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[7] Judge Gallagher considered and rejected this Opposition when it found Mr. Banks in violation of Rule 49(b) and issued the 1987 Injunction. See In re Banks, 561 A.2d 158 (D.C. 1987).

[8] ID

[9] Additional Claims

Although Mr. Banks did not raise directly the following claims in his present Motion to Vacate or his Reply to the Opposition, these claims touch on the same subjects raised in his Motion and reply. These claims have been made repeatedly by Mr. Banks in case No. 87-SP-97 and case No. 87-SP-1339, as well as in other motions he has filed in case No. 92-SP-652.

D.C. Ct. App. R. 49 is Unconstitutional
No. 87-SP-97 Supplemental Opposition to Petition for Injunction at 6 Motion to Stay at 13-14 Denied in 6/3/87 Order
No. 87-SP-1339 Motion for Declaratory Judgment at 13 Denied in 3/21/89 Order Motion to Vacate or Dissolve the Injunction at 2-7, 28-30, 32-34, 37 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 2-7, 28, 32-33 Denied in

Committee, relying upon Walker v. City of Birmingham, 388 U.S. 307 (1967), argues that Mr. Banks is prevented from attacking the 1987 Injunction because he does so as a defense to a charge to contempt. (Committee's Response to Motion to Vacate, at 16-17). This Reliance, however, is misplaced. The Walker case dealt with a charge of criminal contempt, while Mr. Banks is defending a charge of civil contempt.

Regardless of whether a challenge to the validity of the underlying order is a viable defense to a charge of civil contempt,[10] no such challenge can prevail here. Where, as here,

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3/21/89 Order Petition for Rehearing En Banc at 1 Denied in 2/28/90 Order

**Selective Prosecution**

NO. 87-SP-97 Motion to Stay at 13-15, and Affidavit in Support at 5 denied in 6/3/87 Order Motion for Declaratory Judgment at 5 Denied in 3/21/89 Order Motion to Vacate or Dissolve the Injunction at E, 25, 29 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 25, 29 Denied in 3/21/89 Order Motion for Injunctive Relief at 2-3 Denied in 4/21/89 Order Petition for Order to Show Cause at 4 Denied in 5/25/89 Order

**Violation of Privileges and Immunities Clause**

No. 87-SP-97 **Motion to Stay at 8 Denied in 6/3/87 Order**
**No. 87-SP-1339 Motion to Stay at 1, and Affidavit in Support at 6 Denied in 12/22/87 Order Motion to Provide Appellant With Documents Secretly Withheld at 4 Denied in 1/31/89 Order Motion for Declaratory Judgment at 12-13 Denied in 3/21/89 Order Motion to Vacate or Dissolve the Injunction at 2-6 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 2-6 Denied in 3/21/89 Order Petitioner Lacks Standing**
**No. 87-SP-97 Opposition to Petition for Injunction at 4-5**
**No. 87-SP-1339 Motion to Vacate or Dissolve the Injunction at 11-21 Denied in 3/21/89 Motion Motion for Mandamus at 3 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 11-21 Denied in 3/21.89 Order**

**Commerce Clause Violations**

No. 87-SP-1339 Affidavit in Support of Motion to Stay at 6-8 Denied in 12-22-87 Order Motion to Vacate or Dissolve the Injunction at 5, 30 Denied in 3/21/89 Order Points and Authorities in Support of Opposition to Renewed Motion to Publish at 5-30 Denied in 3/21/89 Order Motion for Injunctive Relief at 2 Denied in 4/21/89 Order

[10] Although it might appear that Respondent finds some support for his position in District of Columbia v. Group Ins. Admin., Nos. 92-CV-437,

there has been an appeal of the underlying order (1987 Injunction) upon which the contempt order is based, any further attack on the underlying order is barred by the doctrine of claim preclusion. See United States v. Rylander, 460 U.S. 752, 756-757 (1983); Maggio v. Zeitz 333 U.S. 56, 68-69 (1947); Donovan v. Sovereign Security, Ltd. 726 F.2d 55, 60 (1984); Halderman v. Pennhurst State School & Hospital, 673 F.2d 628, 637 (3rd. Cir. 1982) (en banc cert. Denied 465 U.S. 1038 (1984); Hecht v. Don Mowry Flexco Parts 111 F.R.D. 6, 13 n.6 (N.D. IL 1986).

For the Reasons set forth above, all of the arguments made by Mr. Banks in support of vacating the 1987 Injunction are barred by the doctrine of claim preclusion. MOTION FOR HEARING On November 300, 1993 Respondent filed a Motion for Hearing on the Merits Regarding Motion to Vacate/Amend or in the Alternative to Alter the Injunction. The arguments made in support of the Motion for Hearing are no more than repetitions of arguments made before this Court in numerous other pleadings. Respondent fails to point to material that has not previously been presented to the Court in writing. Accordingly, the Court does not believe that any benefit to the Court in its disposition of the Motion to Vacate will be accomplished by holding a hearing. See Super. Ct. Civ. R. 12-I(f).

For the foregoing reasons, this 9th day of December, 1993, it is hereby:

**ORDERED** that Respondent's First Motion to Vacate the Injunction is **DENIED**; and it is

**FURTHER ORDERED** that Respondent's Motion for Hearing on the Merits is **DENIED**.

Richard A. Levie
Associate Judge

Copies mailed to:
Mr. Simon Banks
468 M Street, S.W.

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92-CV-942, slip op. at 11-12 (D.C. Oct. 28, 1993), a close reading of that case and the cases relied upon by the Court of Appeals suggest that any such support is illusory. In Group Insurance Administration, and the cases relied upon there, each such case involved a situation where the underlying order either had not been appealed or was simultaneously be appealed along with the order of contempt. In contrast the situation here involves one where the underlying order had been appealed; accordingly, a different doctrine of law applies. See text at p. 16.

Washington, DC 20024

Stuart F. Peirson, Esq.
Davis, Wright & Tremaine
701 Pennsylvania Avenue, N.W. , Suite 600
Washington, DC 20004

**DISTRICT OF COLUMBIA**
**COURT OF APPEALS**

IN RE SIMON BANKS (1992) ) Court of Appeals
) No. 92-BG-652
)

ORDER #13
(April 21, 1994)

The Court has before it Simon Banks' Motion to Vacate all Orders Issued Subsequent to Removal Pursuant to 28 U.S.C. §§ 1443, 1146 & 1447.[1] Although Respondent attached Orders 10-12 to his Motion, he conspicuously did not attach Order 9, where the Court noted that it had received a certified copy of the Remand order issued by Chief Judge Penn. Upon receipt of the certified copy, and in the absence of any stay issued by the united States District Court for the District of Columbia or the United State Court of Appeals for the District of Columbia Circuit, jurisdiction was again vested in this Court. None of the Orders about which Respondent complains were issued until after the Court received the certified copy of the Remand Order. Thus, the Court finds Respondent's Motion to be without merit.

Accordingly, it is this 21st day of April, 1994:

**ORDERED** that the Motion to Vacate filed by Respondent on April 19, 1994 is **DENIED**.

Richard A. Levie
Associate Judge

Copies faxed to: Stuart Pierson, Esq.
Simon Banks

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[1] Mr. Banks also makes objections to the scheduling of the May 9, 1994 hearing, orders 10-12 and all proceedings conducted subsequent to removal of the case. The Court does not view Respondent's Objections as seeking any relief from the Court. The Court rules in response to motions, not objections.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

* * *

Executive Office
MEMORANDUM

TO: Elizabeth C. Lloyd
Interim Director
Office of Legislative Support

FROM: Robert R.Rigsby
Corporation Counsel

DATE: **February 7, 2002**

SUBJECT: Draft Bill, the "Unlicensed Practice of Law and Government Employment Application Fraud Amendment Act of 2002"
(AE-02-018)

Attached please find a bill, drafted by this Office, entitled the "Unlicensed Practice of Law and Government Employment Application Fraud Amendment Act of 2002" (bill). Also attached is a mayoral transmittal letter to accompany the bill when the Mayor sends it to the Chairman of the Council.

The bill would amend the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3201 *et seq.* (2001))(Act) to add a new section 124a to the Act to make it a crime to practice law in the District without a license. In addition, the bill would authorize the Corporation Counsel to commence suit to obtain an injunction to stop persons, partnerships, corporations, or associations from engaging in the unlicensed or unauthorized practice of law. The bill would also add a new section 124b to the Act to define the crime of "government employment application fraud." This offense would apply to persons who seek District government employment by means of an employment application that contains misstatements, misrepresentations or other fraudulent statements. Both the ..unlicensed practice of law and government employment application fraud would be punishable by a fine of up to $1,000 or imprisonment of up to 180 days, or both.

The bill is modeled upon provisions from similar New York and Florida statutes.

If you have any questions with regard to this legislation, please contact Darryl G. Gorman,

Chairman Linda W. Cropp

at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Linda W. Cropp, at the request of the Mayor, introduced the following bill, which was referred to the Committee on .To amend the District of Columbia Theft and White Collar Crimes Act of 1982 to deter the unlicensed practice of law by making it a crime to practice law in the District of Columbia when not licensed or authorized to do so by the District of Columbia Court of Appeals; to authorize the commencement of suit by the Corporation Counsel to enjoin persons, partnerships, corporations, or associations from engaging in the unlicensed practice of law; and to make it a crime to willfully furnish false statements in applications for District of Columbia government employment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Unlicensed Practice of Law and Government Employment Application Fraud Amendment Act of 2002". Sec. 2. The District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3201 *et seq.(2001))* is amended as follows: (a) The Table of Contents is amended by adding the following after the phrase "Fraudulent Registration": "Sec. 124a. Unlicensed Practice of Law"Sec.124b. Government Employment Application Fraud.".\(b) A new section 124a is added to read as follows: "Sec. 124a. Unlicensed Practice of Law.

"( a) Any person not licensed or otherwise authorized by the District of Columbia Court of Appeals who practices law or assumes or holds himself or herself out to the public as qualified to practice in the District of Columbia, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to act as a lawyer in the District of Columbia, shall be fined not more than $1,000 or imprisoned for not more than 180 days, or both. The Corporation Counsel of the District of

Columbia is authorized to bring prosecutions under this subsection. "(b) In addition to any criminal action under subsection (a) of this section, the Corporation Counsel may maintain an action for injunctive relief upon his or her own information, or upon the complaint of a private person or of a bar association organized and existing under the laws of the District of Columbia, against any person, partnership, corporation, or association, and any employee, agent, director, or officer thereof who commits any act or engages in any conduct prohibited under subsection (a).".(c) A new section 124b is added to read as follows: "Sec. 124b. Government Employment Application Fraud. "(a) A person commits the offense of government employment application fraud if, with the intent to obtain employment with the District of Columbia government, he or she willfully provides false information, by affirmative statement, omission, misrepresentation, impersonation, or other fraudulent means, in any application for voluntary or paid employment and the false information is used in making a determination as to such person's qualifications for employment by the District of Columbia government. "(b) Any person convicted of government employment application fraud shall be fined not more than $1,000 or imprisoned for not more than 180 days, or both. The Corporation Counsel of the District of Columbia is authorized to bring prosecutions under this section". Sec. 4. Fiscal impact statement. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602( c )(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3) (2001)). Sec. 5. This act shall take effect following the approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto), and a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(2) (2001)), and publication in the District of Columbia Register.

**ANTHONY A. WILLIAMS**
**MAYOR**
**DISTRICT OF COLUMBIA COURT OF APPEALS**
**No. 87-97 FILED JUN 11 1987**

**DISCTRICT OF COLUMBIA COURT OF APPEALS**
**In the Matter of:**
**SIMON BANKS,**
**Respondent**
**0 R DE R**

On June 9, 1987, respondent filed a document labeled "Complaint Against the Petitioner," in which various assertions are made, primarily concerning the investigative and preliminary stages of this proceeding.

Upon consideration, and it appearing that respondent is a lawyer, having received a law degree (though not admitted to practice): and it further appearing that no discernible relief respondent in this proceeding is now apparent, it is

ORDERED that this document shall be accepted for filing in
the court record in this proceeding, and it is

FURTHER ORDERED that, treating it as a Motion for Relief, the relief being uncertain, the motion is denied without prejudice, and it is

FURTHER ORDERED that the hearing to take evidence in this proceeding shall commence as scheduled on June 15, 1987, at 1:30 p.m. in the courtroom of the District of Columbia Court of Appeals.

Copies to:
James "P. Schaller, Esquire
Chairman
Committee on Unauthorized Practice of Law
1120 20th Street, N.W. Suite 300
South Washington, D.C. 20036

Mr. Simon Banks
700 Seventh Street, S.W. Suite 306
Washington, D.C. 20024

Jay A. Resnick
Executive Secretary
500 Indiana Avenue, N.W.
Washington, D.C. 20001

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Minority Business Opportunity Commission**

Charlotte G. Chapman
*Chairperson*
Courtland Cox
*Executive Director*

*Simon Banks & Associates*
*1500 Massachusetts Ave., N.W.*
*Washington, D.C. 20005*

*Date February 21,1980*

*Attn: Simon Banks*
*Dear Mr. Banks*

*The District of Columbia Minority Business Opportunity Commission in its meeting on February 5, 1980 Certified and registered your business enterprise in the Sheltered Market Program as promulgated by D.C. Law 1-95"Minority Contracting Act of 1976", and therefore said enterprise is duly registered by the Commission under the following work classification (s):*
Administrative Law Judge & Hearing Examiners, Legal Consultants

The certificate of registration, according to Section 9(c) of D.C. Law 1-95, will expire two years from the effective date of approval. Bidding on Sheltered Market contracts shall be limited to the above work classification(s), and this letter must be attached to the front of the contractor's sealed bid.

*Date of Approval February 5,1980*
*Certification Number 3495*
*Date of Expiration March 20, 1980*

_____
Charlotte G. Chapman, Chairman

**District of Columbia**

**Court of Appeals**

Nos. 96-SP-817, 97-SP-1629, 97-SP-1760, 97-SP-1761, 97-SP-1762, 99-SP-I025 & 99-SP-1192

IN RE: SIMON BANKS, August 10, 2001
Appellant.

SP1048-96
SP1038-96
ORDER

On consideration of the motion of appellant for leave to file the amended certificate of service, and the motions of appellee, United States, for extensions of time within which to file the brief, and the opposition thereto, and the motion of appellee, Stuart Pierson, for an extension of time within which to file the brief, and the opposition thereto, and the motion of appellant for clarification, and the notice of appellant, and the letter of appellant, and the **motion of appellant to strike appellee, Stuart F. Pierson's joinder motion**, and the motion of appellant to submit, and the motion of appellant to preclude, and the opposition thereto, and the **motion of appellant to dismiss Corporation Counsel as a party**, it is

ORDERED that the motion of appellant for leave to file the amended certificate of service is granted, and the lodged amended certificate of service is filed. It is

FURTHER ORDERED that the motions of appellee, United States, for extensions of time within which to file the brief are granted, and the brief of appellee, United States, shall be filed on or before August 31, 2001. It is

FURTHER ORDERED that **motion of appellant for clarification is denied.** It is

FURTHER ORDERED that the **notice and the letter of appellant is stricken as**

**improperly filed in these appeals**. It is

FURTHER ORDERED that the **motion of appellant to strike appellee, Stuart F. Pierson's, joinder motion is denied.** It is FURTHER ORDERED that the motion of appellant to submit is denied. It is FURTHER ORDERED that **the motion to preclude is denied**. It is

**Nos. 96-SP-817, 97-SP-1629, 97-SP-1760, 97-SP-1761, 97-SP-1762, 99-SP-I025 & 99SP-1192**

FURTHER ORDERED that the **motion of appellant to dismiss Corporation Counsel as a party is denied.**

BY THE COURT:
Copies to:

Simon Banks
2841 Park Center Drive
Alexandria, VA 22302
Stuart F. Pierson, Esquire
401 9th Street, NW Suite 1000
Washington, DC 20004
John P. Dean, Esquire Committee on Admissions
500 Indiana Avenue, NW Room 4200
Washington, DC 20001
Charles L. Reischel, Esquire
Deputy Corporation Counsel

**District of Columbia**

**Court of Appeals**

Nos. 97-SP-1761 and 97 -SP-1762
IN RE: SIMON BANKS, 92-BG-652
And Appellant.
Nos. 96-SP-817, 97-SP-1629, 97-SP-1760, 99-SP-I025, 99-SP-1192 & 00-SP-815
IN RE: SIMON BANKS,
Appellant.
SP1038-96, 96-BG-114
BEFORE: Schwelb and Glickman, Associate Judges, and King, Senior Judge.
ORDER

On further consideration of this court's June 16, 2000, order that filed appellant's lodged consolidated brief and this court's October 13, 2000, order that consolidated appeal no. 00-SP-815 with the previously consolidated appeals and directed appellant to file a supplemental brief addressing the issues raised in appeal no. 00-SP-815, appellant's motions for extensions of time to file the supplemental brief, appellant's motions for extensions of time to file an amended consolidated brief, the lodged consolidated brief addressing all appeals, appellant's motions for extensions of time to file a supplement to the lodged consolidated brief and table of contents and authorities and appendices, and the lodged addendum to the lodged amended consolidated brief, the lodged supplement to the lodged amended consolidated brief, the lodged table of content and table of

authorities to the lodged amended consolidated brief, and the lodged table of contents to the lodged appendices 1-112 to the lodged consolidated brief, and it appearing that these lodged documents are voluminous, it is

ORDERED that appellant's motions for extensions of time to file the lodged amended consolidated brief are denied. It

FURTHER ORDERED that appellant's motions for extensions of time to file a supplemental brief addressing the issues in appeal no. 00-SP-815 are denied. It is

FURTHER ORDERED that appeal no. 00-SP-815 is hereby dismissed. It is

Nos. 96-SP-817, 97-SP-1629, 97-SP-1760, 97-SP-1761, 97-SP-1762, 99-SP-I025, 99-SP-1192 & 00-SP-815

FURTHER ORDERED that appellant's motions for extensions of time to file the other lodged documents to the lodged amended consolidated brief are denied as moot. It IS

FURTHER ORDERED that if appellant wants to retrieve the lodged documents that have not been accepted for filing, appellant shall do so within 15 days from the date of this order. Failure to retrieve these documents will result in the court disposing of the unfiled documents. It is

FURTHER ORDERED that appellees shall file their briefs within 30 days from the date of this order. It is

FURTHER ORDERED that the Clerk shall not accept for filing any further pleadings from appellant other than a reply brief, after the filing of appellees' briefs, that conforms with D.C. App. R. 28.

PER CURIAM

Copies to:

Mr. Simon Banks
P.O. Box 17052
Alexandria, VA 22302
John R. Fisher, Esquire
Assistant United States Attorney
Stuart Pierson, Esquire
COMMITTEE ON UNAUTHORIZED PRACTICE
500 Indiana Ave., NW, Room 4200

Washington, D.C. 20001
Charles L. Reischel, Esquire
Deputy Corporation Counsel
Stuart Pierson, Esquire
1300 Eye Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314

**DISTRICT OF COLUMBIA COURT OF APPEALS Court of Appeals**

**In Re Simon Banks (Respondent)** No. **96-BG-114**
**SP No. 1038-96**

**ORDER L**

**(August 28, 1997)**

With the consent and agreement of Respondent, Simon Banks, it is this 28th day of August, 1997:

**ORDERED** that Respondent, Simon Banks:

(1) shall immediately withdraw and cease from representing any persons before any federal, District of Columbia or state administrative or regulatory agency;

(2) shall not give advice to any person regarding any matter in connection with any federal, District of Columbia or state administrative or regulatory agency;

(3) shall not prepare for filing any papers before any federal, District of Columbia or state administrative or regulatory agency on behalf of any person;

(4) shall not appear before any federal, District of Columbia or state administrative or regulatory agency on behalf of any person;

(5) shall not represent in any fashion any person before any federal, District of Columbia or state administrative or regulatory agency on behalf of any person; and it is FURTHER ORDERED that this Order shall apply to all national, local or regional offices of all federal, District of Columbia or state administrative or regulatory agencies; and it is

FURTHER ORDERED that this Order shall be circulated by the Office of the United States Attorney and the Probation Office.

JUDGE RICHARD A. LEVIE

AGREED:

Simon Banks, Thomas E. Zeno, Esq.

Assistant United States Attorney

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**In Re Simon Banks (Respondent)) No. 96-BG-114**
**SP No. 1038-96**
**JUDGMENT AND COMMITMENT ORDER**
**(August 28, 1997)**

The above named Defendant having been found guilty by the Court to Counts 1,2,3,4,5, & 6 - Criminal Contempt, and the Court having revoked probation, it is hereby **ORDERED** that the Defendant, Simon Banks, is hereby SENTENCED:

Count One: 175 days, ESS all but 21 days to be served on alternate weekends commencing on September 5, 1997 beginning at 5:30 pm on Friday and continuing until 8:00 pm on Sunday of each such weekend, 4 yrs probation with the special condition that Defendant, Simon Banks, comply with all requirements of Order L, dated August 28, 1997 and also comply with all other conditions set by the Probation Office;

The sentence for Count One shall apply exactly for each of Counts 2,3,4,5, & 6, including the conditions of Probation set forth in connection with Count One.

JUDGE RICHARD A. LEVIE

**DISTRICT OF COLUMBIA COURT OF APPEALS**
**In re Simon Banks (Respondent)**

Court of Appeals
No. 96-BG-114
SP No. 1038-96

**ORDER**

This matter comes before the Court upon the government's request for an Order to Show Cause why the probation of defendant Simon Banks should not be revoked because he has violated his probation imposed on June 5, 1996 which

required him to abide by the provisions of Order # 18 issued by this Court of January 13, 1995. In support of its motion, the government submitted the written complaint of Ronda Reid. A copy of the letter and the four documents comprising the complaint are attached to this Order as Exhibit A, pages 1 through 8. For good cause shown in Exhibit A, it is this 17th day of July, 1997,

**ORDERED** that defendant Simon Banks shall appear before the Honorable Richard A. Levie at 9:30 a.m. on August 21, 1997 in the Superior Court of the District of Columbia, Courtroom 516, to show cause why his probation should not be revoked based upon the following six alleged violations, each of which refers to Exhibit A.

A TRUE COPY TEST:
Clerk, Superior Court of the
District of Columbia

FIRST. That defendant's statements to Ms. Reid and her mother describing himself as an administrative law judge violated the prohibition in paragraph C of Order # 18 that he not use such terms to describe himself or his qualifications as "administrative law judges," "administrative trial advocate," any abbreviation of the foregoing terms, or any other similar term or description also which reasonably denotes that Respondent's former employment as a hearing examiner constitutes a qualification or license to practice law in the District of Columbia; SECOND. That defendant's description of himself as an Administrative Law Judge in the "Disclosure Statement" violated the prohibition in paragraph 3 of Order # 18 that he not use such terms to describe himself or his qualifications as "administrative law judges," "administrative trial advocate," any abbreviation of the foregoing terms, or any other similar term or description also which reasonably denotes that Respondent's former employment as a hearing constitutes a qualification or license to practice law in the District of Columbia;

**THIRD, FOURTH and FIFTH.** These violations refer respectively to the "Disclosure Statement" and each of the two receipts for payments, dated January 11 and April 9, 1997. The defendant's use of these documents violated the prohibition in paragraph 6 of Order # 18 against using any advertising materials, business cards, . . . stationery, . . . or any other business documents

relating to representation of individuals before administrative agencies or courts in this jurisdiction which do not expressly state: **THIS IS TO ADVISE THAT SIMON BANKS, AND SIMON BANKS T/A JOB PROTECTORS. IS NOT ADMITTED, AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF COLUMBIA. OR ANY OTHER JURIS DICTION. HE IS NOT AUTHORIZED TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY COURT IN DISTRICT OF COLUMBIA. HE IS NOT AUTHORIZED TO GIVE OPINIONS CONCERNING ANY PERSON'S LEGAL RIGHTS.**

This statement shall be printed, in all instances, in bold-face, underscored, in all capital letters. It shall be printed at the beginning of all documents not signed by customers in a separate paragraph in typeface no smaller than the largest typeface of the remainder of the document. With respect each document that a customer signs, this statement shall appear at the beginning, in separate paragraph, in typeface no smaller than the largest typeface of the remainder of the document; and the customer shall initial each line and then sign immediately below the statement indicating the actual date of execution.

SIXTH. That defendant's description of his business in the "Disclosure Statement" as providing nationwide service violated the prohibition in paragraph 4 of Order # 18 that he not "describ[e] his business as providing nationwide representation;" and it is

**FURTHER ORDERED** that the government produce witnesses to substantiate the assertions contained in its Request and forming the basis of the instant Order; and it is

**FURTHER ORDERED** that Respondent Simon Banks may be represented by counsel, may cross-examine any witnesses presented by the government and may present evidence in his own behalf.

JUDGE RICHARD A. LEVIE

Copies mailed to:

Simon Banks 2841 Park Center Drive, Alexandria, VA 22302
Mr. Simon Banks 468 M Street, SW Washington, DC 20024
Thomas E. Zeno, Esq. Office of the United States Attorney
555 4th Street, NW, Fifth Floor Washington, DC 20001
Ms. Gloria Hendricks Probation Officer

409 E Street, NW Building B, Room 311, Washington. DC 20001
L:\Banks\sc71797.doc
April 24, 1997
*ATTACHMENT A, PAGE 3 of 8*
800/£00d 764 ' ON
**J0B PROTECTORS**
**LEGAL CONSULTANTS**
**FORMER HEARING EXAMINERS**
**468 M. STREET, S.W.**
**WASHINGTON, D.C. 20024**
**(2021 554-5627**
**THIS IS TO ADVISE THAT SIMON BANKS,AND SIMON BANKS T/A JOB PROTECTORS, IS NOT ADMITTED. AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF COLUMBIA. OR ANY OTHER JURISDICTION. HE IS NOT AUTHORIZED TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY COURT IN THE DISTRICT OF COLUMBIA. HE IS NOT AUTHORIZED TO GIVE OPINIONS CONCERNING ANY PERSON 'S LEGAL RIGHTS**

'DATE: January 11, 1997

**RECEIPT FOR CONSULTANT SERVICES**
TO:
**Ronda Reid**
AMOUNT: (SPELL] One Hundred Dollars [$100.00]
CASH:
For Dr. Simon Banks/Job Protectors Former Hearing Examiners
*** LEGAL CONSULTANTS=**

I , acknowledge that I have been advised that Simon Banks/Job Protectors, will not provide and are not authorized to provide any representation service before any court in connection with the services discussed and/or contracted for. All services provided will be limited to administrative agencies, state and federal, throughout the United States that do not require your representative to have a license to practice law.
*Authorized to represent parties before Federal and State Administrative Judges of Administrative Agencies,
**We represent attorneys. government employees and private sector employees at hearings/trials/Appear before**

**administrative judges of administrative agencies that do not require a license to practice law**

ATTACHMENT A, PAGE 4 of 8
8OO/400d NO. 764
15:35 04/24/97
P005/008 b92, ' ON

**DISCLOSURE STATEMENT**
**THIS IS TO ADVISE THAT SIMON BANKS. AND SIMON BANKS T/A JOB PROTECTORS. IS NOT ADMITTED. AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF COLUMBIA. OR ANY OTHER JURISDICTION. HE IS NOT AUTHORIZED TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY COURT IN DISTRICT OF COLUMBIA. HE IS NOT AUTHORIZED TO GIVE OPINIONS CONCERNING ANY PERSON'S LEGAL RIGHTS**

I, hereby acknowledge, that I have been advised that Dr. Simon Banks is authorized to appear on *my* behalf and represent me in person against attorneys before any "administrative judge" *or "Hearing* Examiner" of the United States, also known as Administrative Law Judge, that may be assigned to hear and adjudicate my case. in connection with my complaint/appeal/grievance.

I, hereby further acknowledge, that I have been advised that Dr. Simon Banks, [Dr. Jurisprudence Law] has represented attorneys, medical doctors, Phd's; and a Dean of a University before administrative agencies of the United States, in connection with Discrimination complaints, before administrative agencies, before administrative judges of the United States, previously referred to as Hearing Examiners..

I, hereby further acknowledge, that I have been advised that Dr. Simon Banks, was appointed Hearing Examiner, to convene, hear and decide discrimination complaints argued before him by attorneys, after being competitively selected over attorneys, by a committee of attorneys, for this *position upon* the recommendation of attorneys and Judges of the Superior Court, and upon the recommendation of the President of the C & P Telephone Company, and the Former Chairperson of the D.C. City Council Judiciary Committee that also selects Superior Court Judges.

I have been advised that Attorney Algie Lewis, General Counsel for the District of Columbia Office of Human Rights, and former Administrative Judge Harold Banks, regularly presented cases before Dr. Banks, as well as: former Superior Court Judge Charles Halleck, the law firms of Hogan & Hartson, Wilmer Cutler and Pickering, Williams & Connelly, and many other MEGA law firms represented their clients before Dr. Simon Banks, when Dr. Simon Banks was Chief Hearing Examiner for the D.C. Commission on Human Rights, the judicial arm and appellate *(Appeals) division of the District* of Columbia office of Human Rights. and when Dr. Banks was Chief Hearing Examiner for the D.C. Rental Accommodations office. (Rent Control.

I, hereby further acknowledge, that I have been made aware that the United States Civil Service Commission changed the title "Hearing Examiner" to Administrative Law Judge in 1972, by regulation on August 19, 1972, 37 Fed. *Reg.* 1687, and by statute on March 27, 1978,

Sign here: /--_____.

ATTACHMENT A, PAGE S of 8

Page 1 of 2
15:36 04/24/97
5 U.S.C. § 3105.5372, and that the United States Merit Systems Protection Board changed the title "Hearing Examiner" in 1980, and that the United States Equal Employment Opportunity Commission changed *the title of their* "Hearing Examiners" to "Administrative Judge", in 1987, and that the D.C. Office of Employee Appeals changed the title of their "Hearing Examiners" to "Administrative Judge" on November 12, 1991, although the official title still remains "Hearing Examiner". and I have been further advised that the D.C. Consumer & Regulatory Affairs, (Hereinafter "DCRA") changed the title of their Hearing Examiners to "Administrative Law Judge" in 1992, and then again on January 20, 1995, thru rulemaking. See D.C. Register, Vol. 42 No. 3, Pg. 396.

I have been further advised that Marie Johnson, former Vice Chair of the United States Merit Systems Protection Board, who was confirmed by the United States Senate Governmental Affairs Committee that confirms Judges to the Superior Court for the District of Columbia, issued a publication stating that she was

an Administrative Law Judge with the District of Columbia Rental Accommodations Office, although her official title was "Hearing Examiner" when and while she was a subordinate Hearing Examiner to Dr. Simon Banks, and when Dr. Banks was chief of Eviction Adjudication with the D.C. Rental Accommodations Office, now DCRA.

I have been advised that Blacks Law *Dictionary* and *Baron's Law* Dictionary state that the title "Hearing Examiner" and "Administrative Law Judge" are interchangeable. That Dr. Banks performed virtually the same, duties and functions as. EEOC Administrative Judges, and MSPB Adm. Judges.

I have been advised that Simon Banks (Dr. of Jurisprudence Law] has been ordered not to refer to his former position of "Hearing Examiner" as "Former Administrative Law Judge" until he is admitted to the Bar. This order does not apply to other hearing examiners, like Marie Johnson, former Vice Chair of the Merit Systems Protection Board, nor does this order apply to hearing examiners of the EEOC, or to hearing examiners of the District of Columbia Office of Employee Appeals, nor to Hearing Examiners of the District of Columbia Consumer and Regulatory Agency, whom call themselves Administrative Judges. and Administrative Law Judges, although their official titles are Hearing Examiners.

I have been advised that Simon Banks (Dr. of Jurisprudence, Law) has been ordered not to state that he- provides nationwide service until he is admitted to the Bar, **even though Dr. Banks represent government employees in Japan and Europe,** Texas. Florida, Ohio, etc. This order does not apply to other similarly situated persons.

I further acknowledge that I have been advised that although Dr. Simon Banks, has a law degree, he is not an attorney. He is not a member of the Bar.

*Bar membership is **not required as a condition for representing parties before various state and** federal **administrative agencies.***

_____Date

**Ronda Reid Page 2 of 2**

*ATTACHMENT A , PAGE 6 of 8*
*800/900d NO. 764*
**JOB PROTECTORS**

**LEGAL CONSULTANTS**
**FORMER HEARING *EXAMINERS***
**468 M. STREET, S.W.**
**WASHINGTON, D.C. 20024**
**[2021 554-5627**
**THIS IS ADVISE THAT SIMON BANKS, AND SIMON BANKS T/A JOB PROTECTORS. IS NOT ADMIT'T'ED, AND HAS NEVER BEEN ADMITTED TO PRACTICE LAW IN THE DISTRICT OF COLUMBIA, OR ANY OTHER JURISDICTION. HE IS NOT AUTHORIZED TO REPRESENT ANY PERSON OR ENTITY BEFORE ANY COURT IN THE DISTRICT OF COLUMBIA. HE IS NOT AUTHORIZED TO GIVE OPINIONS CONCERNING ANY PERSON'S LEGAL RIGHTS**

**DATE:**

**RECEIPT FOR CONSULTANT SERVICES**

**TO:**
**AMOUNT:**
**SPELL] Three Hundred Dollars [$300.00]**
**CASH:**
**For Dr. Simon Banks/Job Protectors Former Hearing Examiners**
**LEGAL CONSULTANTS**

I , acknowledge that I have been advised that Simon Banks/Job Protectors, will not provide and are not authorized to provide any representation service before any court in connection with the services discussed and/or contracted for. All services provided will be **limited to administrative agencies,** state and federal, throughout the United States that do **not require your** representative to have a license **to practice law.**
**"Authorized to represent parties before Federal and State Administrative, judges of Administrative Agencies***
**We represent attorneys, government employees and private sector employees at Hearings/trials/Appeals before administrative judges of administrative agencies *that do* not require a license to practice law**

ATTACHMENT A, PAGE 7 of 8

**DESIGNATION OF REPRESENTATIVE**

The Complainant is entitled to be represented by an individual or an organization of his or her choosing in connection with a complaint, unless the choice results in a conflict of position or a conflict of interest for the person or organization chosen. A representative may assist and counsel a Complainant in the preparation and presentation of his or her complaint and appear with or for the Complainant at a hearing or other proceeding when authorized by the Equal Employment Opportunity Commission. The Commission does not designate representatives for Complaints. All arrangements for a representative must be made by the Complainant.

When a Complainant designates a representative. the Complainant give his/her *consent to* the Commission to disclose all information concerning the complaint to the person or organization designated. Failure by the Complainant to complete and return this form or a similar statement will preclude any representative from participating in the case while it is pending before the Equal Employment Opportunity Commission.

I hereby designate the individual or organization named below to represent me in connection with my complaint before the Equal Employment opportunity Commission and to receive all information concerning *the* complaint from the Commission.

Dr. Simon Banks/Job Protectors [202] 554-5627; Fax 202 554-1115 [Legal Consultants] This is not a law firm and Representative is not licensed to practice law. Representative is not an Attorney

Name of Individual or Organization
Telephone Number
468 M Street. S.W., Water Front,
Address (Number and **Street)**
**Washington, D.C. 20024**
City State **Zip Code**
**Signature of Complainant** ( )

I understand that this designation may be cancelled by me or the individual or organization that I have designated and I am responsible for notifying the Commission in writing of the cancellation.

ATTACHMENT A, PAGE 8 of 8
P008/ NO. 764

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**In Re: Simon Banks (Respondent) )No. 96-BG-114**
**SP No. 1038-96**
**No. 92-BG-652**
**97-SP-1761 & 1762**

**ORDER**
(June 13, 2000)

This matter is before the Court on respondent's 1) Motion of Respondent for Reduction of Sentence and Probation to Time Served and Reinstatement of Practice Privilege, 2) Appellant's Motion to Vacate and/or Modify the Agreement, 3) Motion to Recuse Judge Richard A. Levie and 4) Motions for Holding Stuart Pierson and Thomas Zeno in Contempt of Court. The government has filed an opposition to respondent's motions. For the reasons set forth below, respondent's motions are **denied.**

The procedural history of this matter is spelled out in Judge Levie's Order dated January 13, 1995 (referred to as Order # 18). In short, Judge Levie found that respondent had violated an injunction issued in 1987 by engaging in certain prohibited conduct. Judge Levie found respondent in civil contempt and expanded the injunction. Thereafter, additional proceedings were conducted and on

May 8, 1996, respondent was found in criminal contempt for engaging in prohibited behavior. On June 5, 1996, respondent was sentenced to a suspended period of incarceration and placed on probation. In August, 1997, after an evidentiary hearing, Judge Levie determined that respondent had committed several violations of probation and revoked respondent's probation. On August 28, 1997, Judge Levie sentenced respondent to 175 days in jail, execution of the sentence was suspended as to all but 21 days followed by four years of probation with certain conditions spelled out in a separate order (hereinafter referred to as Order L).

This matter was reassigned to this Court upon Judge Levie's retirement. See Order dated March 6, 2000. Consequently, respondent's motion to recuse Judge Levie is **denied as moot**

**t.** This Court has reviewed the pending motions and the relevant record herein.

Motion for Reduction of Sentence and Probation to Time Served and Reinstatement of Practice PrivilegesRespondent contends that the court's orders have caused him great harm, and he seeks termination of probation. The government opposes the request. For the reasons stated in the government's opposition, respondent's requested relief is **denied.**

Appellant's Motion to Vacate and/or Modify the Agreement

Respondent makes several challenges to probation revocation including a claim that the evidence was insufficient to find a violation of probation and that the agreement (Order L) was coerced. Respondent renews several other arguments that have been denied previously. For the reasons stated in the government's opposition, respondent is not entitled to relief. In short, defendant's proffered evidence does not differ materially from the government's exhibit at the probation revocation proceeding. Moreover, apart from the document, there were other bases for the violation.

Respondent's contention that he was coerced into consenting to the terms in Order L does not merit relief. As the government notes in its opposition, these claims previously were rejected.1

Motions for Order Holding Thomas Zeno and Stuart Pierson In Contempt

Respondent seeks an order to hold in contempt **Assistant United** States Attorney Thomas Zeno and **Stuart Pierson, past chairperson** of the D.C. Bar's Committee on

As an aside, although the government notes that respondent's claim should be pursued on direct appeal rather than through a motion to vacate pursuant to 23 D.C. Code section 110, the type of "coercion" about which respondent complains is inherent in most sentences, that is, a convicted defendant is required to elect whether to abide by the terms of probation or face an alternative sentence.

The Unauthorized Practice of Law. Although respondent makes numerous legal arguments, the gist of his argument is that their participation in the legal proceedings against him justifies relief. The government has filed an opposition to his motion. Mr. Pierson has not filed an opposition, but the arguments made by the government apply equally to Mr. Pierson. For the reasons

stated in the government's opposition, respondent's motions are **denied.**

Based on the foregoing, it is this 13th day of June, 2000, hereby,

**ORDERED** that respondent's Motion to Recuse Judge Levie **is denied as moot;**

**FURTHER ORDERED** that respondent's Motion for Reduction of Sentence and Probation to Time Served and Reinstatement of Practice Privileges **is denied;**

**FURTHER ORDERED** that respondent's Appellant's Motion to Vacate and/or Modify the Agreement is **denied;**

**FURTHER ORDERED** that respondent's Motions for Order Holding Thomas Zeno and Stuart Pierson in Contempt is **denied.**

**SO ORDERED.**

Judith E. Retchin
Associate Judge

/Signed in Chambers/
Copies Mailed to:
Mr. Simon Banks
P.O. Box 17052
Alexandria, VA 22302
Stuart Pierson, Esq.
1300 Eye Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314
Thomas E. Zeno, Esq.
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20001

**District of Columbia Court of Appeals**
**District of Columbia**
**Court of Appeals**

**Nos. 97-SP-1761 and 97-SP-1762**
IN RE: SIMON BANKS,
Appellant.
92-BG-652

and
Nos. 96-SP-817, 97-SP-1629, 97-SP-1760, 99-SP-1025, 99-SP-1192 & 00-SP-815
IN RE: SIMON BANDS,
Appellant.
**SP1038-96**
**96-BG-114**

BEFORE: Schwelb and Glickman, Associate Judges, and King, Senior Judge.

ORDER

On consideration of appellant's petition for reconsideration *en banc of* the order dated February 14, 2001, the brief and appendices in support thereof, it is

ORDERED that the motion, to the extent that it refers to appeals nos.96-SP-817, 97-SP-1629, 97-SP-1760, 97-SP-1761, 97-Sp-1762, 99-SP-1025, & 99-SP-1192 , is hereby construed as a motion for reconsideration and is denied. D.C. App. R. 40 only applies to orders and judgments that are dispositive and therefore the rule does not apply to the February 14, 2001 order as it applies to these appeals. It is

FURTHER ORDERED that appellant's petition, as it applies to the dismissal of appeal no. OO-SP-815 is hereby referred to the full court for consideration pursuant to D.C. App. R. 40.

PER CURIAM

Copies *to:*
Mr. Simon Banks
P.O. Box 17052
Alexandria, VA 22302
John R. Fisher, Esquire
Assistant United States Attorney
Charles L. Reischel, Esquire
Deputy Corporation Counsel
:

**District of Columbia**
**Court of Appeals**
APR 2 7 2001
No. 00-SP-815
IN RE: SIMON BANKS,
Appellant.
SP 1038-96

BEFORE: Wagner, Chief Judge; Terry, *Steadman, Schwelb, Farrell, Ruiz, Reid, Glickman, and Washington, Associate Judges.
ORDER

On consideration of appellant's pro se petition for rehearing en banc and brief in support of petition; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

*Associate Judge Steadman has recused himself from this case.

Copies to:
Simon Banks P O Box 17052 Alexandria, VA 22302
Stuart Pierson, Esquire1300 Eye Street, NW Suite 500 East Washington, DC 20005-3314
Charles L. Reischel, Esquire Deputy Corporation Counsel
Stuart Pierson, Esquire Committee On Unauthorized Practice 500 Indiana Avenue, NW, Room 4200 Washington, DC 20001
John R. Fisher, Esquire Assistant United States Attorney

**DISTRICT *OF* COLUMBIA COURT *OF* APPEALS**

IN THE MATTER *OF:*

SIMON BANKS,

D.C.C.A. No. 87-97

(Judge Gallagher)

Respondent.

OPPOSITION OF PETITIONER TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT

Petitioner, The Committee on Unauthorized Practice, opposes respondent's motion for summary judgment and hereby requests summary judgment on its behalf. Summary judgment is appropriate only when there are no material facts in issue and when it is clear that the moving party is entitled to judgment as a matter of law. Swann v. Waldman, 465 A.2d 844 (D.C. 1983); Brown v. General Motors Acceptance Corp., 490 A.2d 1125, 1126 (D.C. 1985). Here, although there may not be any material facts in

dispute, the respondent has not carried his burden of showing that he is clearly entitled to judgment as a matter of law. Any doubt about the existence of such an issue must be resolved against the movant. Furthermore, the record must be viewed in the light most favorable to the non-moving party, this Committee. Malcolm Price, Inc. v. Sloane, 308 A.2d 779, 780 (D.C. 1973).

In fact, the only facts material to the issues before the court are not in dispute. Furthermore, the petitioner, rather than respondent, is clearly entitled to judgment as a matter of law. Therefore, the court should deny respondent's motion, but grant the Committee's motion for summary judgment.

1) Respondent represents other persons in proceedings before District of Columbia administrative agencies. See e.g. Respondent's Motion for Partial Summary Judgment (filed April 22, 1987) at 2 1 13; Id. at 3, par. 16; Id. at 5, 1 33; Id. at 7, 11 40, 42, and 43; Supplement to Respondent's Opposition to Committee's Petition at 10, 1 14; Petition for Order to Show Cause at 2-3, 1 8 and Opposition to Petition at 4-S;

..... 2) Respondent offers advice to others regarding their legal rights and on other matters of law, See e.g. Respondent's Motion for Partial Summary Judgment at 7, 1 40; Id. at 8, 11 47 and 49; Supplement to Respondent's Opposition To Committee's Petition at 7 ("..., each person that Respondent has provided **consultant representative** services "); Petition for Order to Show Cause at 3-7; Committee Exhibit A5 (Dec. 17 1986 hearing) transcript of December 17, 1986, hearing at 7; 3) Respondent drafts and files pleadings for others concerning matters of law. See e.g. Respondent's Motion for Partial Summary Judgment at 8, 1 49; Id. at S, 1 33; Id. at 6, 1 35; Id. at 7, 1 40; Petition for Order to Show Cause at 6; Committee Exhibit No. 9 (Dec. 17, 1986 hearing); Committee Exhibit No. 12 (December 17, 1986 hearing); Transcript of December 17, 1986, hearing at 12-14, 21;

4) Respondent placed an advertisement for services in the Washington Post that instructs "Victims of Job Discrimination" that they should contact him "For representation by hearing examiners also known as administrative law judges ...." See Attachment F to Committee's Petition for Order to Show Cause; Respondent's Motion for Partial Summary Judgment at 4, 1 23-24; Petition for Order to Show Cause at 3-7; Opposition to Petition for Order to Show Cause at 6-7; Transcript of December 17, 1986, hearing at 4-6; and

S) Respondent did not provide Lisa Morgan with a form disclosing that he is not a lawyer. See "Supplement

**STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE**

Much of what respondent submits regarding the, "material facts" has no foundation in the record before this court. Despite being sent notice of the Committee's proceeding, respondent chose not to appear at the Committee's hearing held in the District of Columbia Court of Appeals on December 17, 1986. Petition For An Order To Show Cause at 115 (filed February 11, 1987) (hereafter "Petition"). Much of what respondent offers is contradicted by an examination of the transcript of that hearing, which the Committee submitted to the Court with the Petition for an Order to Show Cause. Therefore, for purposes of the Committee's Opposition to respondent's motion for summary judgment, the facts are certainly in dispute regarding respondent's practice of law and his giving the impression that he is authorized to practice law in the District of Columbia. However, for purposes of the Committee's cross-motion for summary judgment, the Committee accepts as true the relevant facts contained in respondent's motion. The Committee does so because most of what respondent offers is irrelevant to the issues before this court: 1) has respondent practiced law in violation of D.C. App. R. 49(b); and 2) has respondent, in violation of D.C. App. R. 49(b), given the public the impression that he is a lawyer or that he is otherwise authorized to practice law in the District of Columbia. In the Committee's view, **accepting the relevant** facts in respondent's pleading as true, it. **is clear that respondent** has both engaged in the **unauthorized practice** of law, and has also violated Rule 49(b) by holding himself out as authorized to practice law in the District.

Thus the only necessary material facts are not **in dispute: These are as follows:**

to Respondent's Opposition to Committee's Petition for Injunctive Relief" at 7; Petition for Order to Show Cause at 1 14; Transcript of December 17, 1986, hearing at 3-34, especially at 6-9, 16-17, and 23-24; Committee Exhibit 11 (December 17, 1986, hearing); Transcript of December 17, 1986 hearing at 16-17.

In summary, respondent does not deny he represents others and gives them advice on matters of law. Though he offers the defense that this representation takes place before administrative agencies, that defense raises a question of law, not a disputed fact. Furthermore, respondent does not deny placing the advertisement in the Washington Post that instructs "Victims Of Job Discrimination" that they should contact him "For representation by hearing examiners also known as administrative law judges ...." **Attachment** x to Petition for Order to Show Cause . The Committee submits that these facts are material, undisputed, and are a sufficient basis to grant summary judgment, because based on these facts alone the Committee is clearly **entitled to judgment as a** matter of law.

1 It should also be noted that respondent cannot, and does not, deny that he failed to disclose to Lisa Morgan . that he is not a lawyer and is not authorized to practice law. See Petition at 114; Transcript of Hearing at 3-34, especialLy at 6-9; and 16-17, and 23-24; and Respondent's Motion.

3

**MEMORANDUM OF POINTS AND AUTHORITIES**

Much of what respondent offers is irrelevant to the issues presented to this court in the Committee's petition. For example, respondent opines about his practice before federal agencies. The Committee does not ask the court to enjoin respondent from appearing before federal agencies to the extent that such representation is permitted by those agencies D.C. App. R. 49(c)(4).

The Committee's petition asks this court to enjoin respondent from violating D.C. App. R. 49(b). In the Committee's view that rule prohibits respondent, a non-lawyer, from practicing law in the District of Columbia. D.C. App. R. 49(b)(1) and (3). It also prohibits respondent from conveying the impression that he is entitled to practice law in the District of Columbia. D.C. App. R. 49(b)(1) and (2).

The record before this court shows that respondent actively practices law in the District of Columbia by advising clients regarding the law and representing them before D.C. administrative agencies. The practice of law is not confined to litigation before courts, and includes advising clients on matters of law, D.C. App. R. 49(b)(3), and representing clients in

proceedings before District of Columbia administrative agencies. J.H. Marshall P, Associates, Inc. v. Burleson, 313 A.2d S86, S94 (D.C. 1973) ("Counsel as to legal status and rights, and conduct in respect thereto, are as much a special function of the English solicitor and American lawyer as ... diagnosis, prognosis, and prescription are in the special field of medicine.") See also, Code of Professional Responsibility. Ethical Consideration 3-S ('**Functionally, the practice of law relates to the rendition of services** for others that call for the professional Judgment of a lawyer"); Opinion of the Corporation Counsel, vol. 4, p.221 (June 21, 1979) (A non-lawyer may not appear in a representative capacity before an administrative agency of the District of Columbia). D.C. Code 51-1509(b) (1981) also provides that a party before a D.C. administrative agency may proceed pro se or be represented by a lawyer; it does not permit representation by non-lawyers. In addition, this court has enjoined as **unauthorized the practice of law** by **non-lawyers before administrative agencies.** In re Amalgamated Development Co., 375 A.2d 494 (D.C.), cert. denied, 434 U.S. 924 (1977). Finally, this court requires suspended or disbarred attorneys to cease practicing law before District of Columbia administrative agencies. D.C. Court of Appeals Rules For the Government of the Bar, Rule XI, 5 19(2). Obviously the court would not impose such a requirement if the representation of others before District of Columbia agencies did not constitute the practice of law.

This court is not alone in finding that representation of others before administrative agencies constitutes the practice of law. This conclusion has been reached by virtually all courts that have considered the question. "The general rule among this and other states has been that representation of another person before a public agency or service commission constitutes the unauthorized practice of law, where the proceedings before those tribunals are held for purposes of adjudicating legal rights or duties of a party." Kyle v. Beco Corp., 109 Idaho 267, 707 P.2d 378, 382 (1985) (citations omitted). "Where the application of legal knowledge and technique is required, the activity constitutes such practice even if conducted before a so-called administrative board or commission. It is the character of the act, not the place where it is performed, which is the decisive factor." Shortz v. Farrell, 327 Pa. 81, 193 A. 20, 21 (1937). See also, People ex rel. Chicago Bar Association v. Goodman, 336 I11. 346, 8 N.E. 2d 941, 947,

cert. denied, 302 U.S. 728 (1937) ("It is immaterial whether the acts which constitute the practice of law are done in one's office, before a court, or before an administrative body."); Hoffmeister v. Tod, 349 S.W. 2d 5, 12-13 (Mo. 1961) (Court found respondent in contempt for representing clients before Workmen's Compensation Board); In re Baker, 8 N.J. 321, 8S A.2d 505, 514 (1951); West Virginia State Bar v. Earley, 144 W.Va. 504, 109 S.E.2d 420, 432-34 (1959); Lukas v. Bar Association of Montgomery County, 35 Md. App. 442, 371 A.2d 669, 672-73 (Md. Ct. Spec. App. 1977); Denver Bar Association v. Public Utilities Commission, 154 Colo. 273, 391 P.2d 467 (1964); In re Unauthorized Practice of Law in Cuyahoga County, 175 Ohio .St. 149, 23 Ohio Ops. 445, 192 N.E.2d 54 (1963); State Bar of Wisconsin v. Keller, 16 Wis. 2d 377, 114 N.W. 2d 796 (1962), vacated and remanded on other grounds, 374 U.S. 102 (1963). But cf. Henize v. Giles, 220 Ohio St. 3d 212, 490 N.E. 2d S85 (1985) (lay representation in informal, non-adversarial setting before unemployment compensation referee is permitted) and Hunt v. Maricopa County Employees Merit System Comm'n, 127 Ariz. 259, 619 P.2d 1036, 1041 (1980) (Lay representation before Commission permitted by court, provided *lay* representative receives no fee and value of controversy *!s* less than $1000).

Respondent's reliance on the Settlement Agreement that he entered into with the Committee is misplaced. The agreement specifically provided in paragraph three that it did "not deal with the question of *whether Banks'* representation of persons before certain agencies of the District of Columbia government contravenes Rule 49." *The* agreement provided in unmistakable terms that "[t]he Committee reserves the right to pursue this issue in the future." See Attachment C to "Petition for an Order to Show Cause" (filed February 11, 1987).

His reliance on the Settlement Agreement is also disingenuous. In paragraph one, he agreed that his advertising materials would "not contain the words 'former administrative law judge' ... or other words suggestive of membership in the legal profession." Id. at t . 1(a)(4). Though the agreement provided that he could identify himself as a "former hearing examiner", this was conditioned on his adding "the words 'not admitted to the practice of law'." Id. at T 1(b). Despite agreeing to these terms, he placed an advertisement in the Washington Post offering "representation by former hearing examiners also known as administrative law judges." The advertisement fails to warn the reader that respondent

is not admitted to the practice of law. See Attachment F to Petition for Order to Show Cause.

These advertisements were designed to and did give prospective clients the impression that Banks was authorized to practice law. Ms. Morgan testified that she felt that she "needed an attorney", and therefore she responded to respondent's advertisement in the Washington Post. For this reason, the "Disclosure of Representative Capacity" form that respondent claims that he gave all clients after they met with him in his office and had already incurred a charge for his "legal services" is irrelevant because the violation of Rule 49(b) and the Agreement had already occurred. In fact the Disclosure form itself would tend to mislead since it states that "Simon Banks, J.D. became a member of the National District Attorneys (sic) Association in 1973 and that in 1975 Simon Banks was appointed a Founding Member of the World Association of Lawyers."

Furthermore, it is **clear from this record** that respondent has not always provided these disclosure forms to his clients. Lisa Morgan testified that no such form was provided to her until after she had engaged respondent, and discovered on her own that respondent is hot a lawyer. Transcript of December 17, 1986, hearing at 16.

Respondent's reliance on the rules of District of Columbia administrative agencies is also misplaced. First, though on his business card, he offers representation regarding "Rent Control", the District of Columbia Rental Accommodations regulations do not permit him to represent clients there for a fee. 33 D.C. Reg. 1336, 1363 (March 7, 1986) Rule 4004.4 permits representation by an attorney; it only permits lay representation in the case of "[a] family member or close personal friend of a party, where the party is incapable of presenting his/her case because of a language barrier, physical infirmity, OT mental incapacity; provided, that the family member or friend receives no compensation for representing the party before the RACD." The same restrictions against lay law practice appears in S 3812.4 for proceedings before the Rental Housing Commission. 33 D.C. Reg. at 1344. Despite these clear prohibitions, the respondent's business card offered representation concerning "Rent Control". See Exhibit 4 submitted to Court in camera with Petition for Order to Show Cause.

In any event, respondent's reliance on the regulations of other District of Columbia agencies is also misplaced. Although

those agencies may purport to permit the practice of law by non-lawyers those regulations are of no force and effect because only the District of Columbia Court of Appeals has the power to regulate the practice of law in the District of Columbia. "No one denies that a court has the inherent right to make rules governing the practice of law." J.H. Marshall & Associates v. Burleson, 313 A.2d 587, 591 (D.C. 1973). It is almost universally recognized that only the highest court in a jurisdiction, as opposed to the legislative or **the executive departments,** has the **"exclusive power to** (Idaho 1985); Lowe Bar Association v. Loeb, 2 N.E.2d 27, 30-31 (Mass.) Simons v. Bellinger, 207 U.S. App. D.C. 24, 31 n. 9, 643 F.2d 774, 781 n.9 (1980), quoting Laughlin v. Clephane, 77 F.Supp. 103, 105 (D.D.C. 1947) ("As attorneys are officers of the court, the power to admit applicants to practice law is judicial and not legislative and is vested in the courts only.")

Because the exclusive power to regulate the practice of law lies within the court, and because this court has not promulgated a rule permitting lay representation before District of Columbia agencies, any agency rule that purports to authorize lay representation would be void and of no effect. West Virginia State Bar v. Earley, supra, 109 S.E.2d at 438. State ex re. State Bar of Wisconsin v. Keller, supra, 114 N.W. 2d at 801; Kyle v. Beco Corp., supra, 707 P.2d at 382-83; People ex rel. Chicago Bar Association y. Goodman, 336 I11. 346, 8 N.E.2d 941, 944-45,. cert. denied, 302 U.S. 728 (1937); Rhode Island Bar Association v. Automobile Service Association, S5 R.I. 122, 179 A. 139, 141-43 (1935); and In re Unauthorized Practice of Law in Cuyahoga County, 175 Ohio St. 149, 192 N.E.2d 54, 56 (1963).

The above cases illustrate the overwhelming majority rule in this country regarding the inherent and exclusive power of the state's highest court to define and regulate the practice of law, including practice before state administrative agencies. In only one jurisdiction has it been held that the legislature could oust the court's jurisdiction, and authorize lay practice before recognized that "[I]n the absence of legislative authorization for lay representation, there would be no question that conduct which constitutes the practice of law, wherever performed, is subject to our constitutional responsibility to protect the public from the unauthorized practice of law." Id.

Second, the Moses decision is of **questionable value** because it was based on an interpretation of the language regarding separation of powers in the Florida Constitution, which

obviously has no application here. Furthermore, other courts have reached the opposite conclusion, finding that separation of powers doctrine precluded the other branches of government from permitting lay representation since the regulation of the practice of law is the exclusive province of the court. For example, the Colorado Supreme Court relied on the separation of powers Article in its state constitution for its conclusion that "[t]his Court has the exclusive power to define and regulate the practice of law by virtue of this constitutional provision; there is no authority in these respects in the legislative or executive departments." Denver Bar Association v. Public Utilities Commission, supra, 391 P.2d at 470 (citations omitted). Similarly, the West Virginia Supreme Court relied on the separation of powers doctrine for its conclusion that only it, as opposed to the executive or legislative department, **could** define and regulate the practice of law. West Virginia State Bar v. Earley, supra, 109 S.E. 2d at 438. This was the basis for its conclusion that any enactment by another branch of government permitting the practice of law by non-lawyers "is void and of no force and effect as an attempt to exercise judicial power by the legislative branch of government." Id. (citations omitted).

CONCLUSION

In summary, it is clear that respondent's consultation with clients in his office, his drafting of pleadings, and his representation of clients before administrative agencies of the District of Columbia constitute the, unauthorized practice of law and violate this court's prohibition against such practice. D.C. App. R. 49(b).

In addition, his advertisement in the Washington Post clearly violates this court's prohibition against non-lawyers giving the impression that they are lawyers or are otherwise authorized to practice law in the District of Columbia.

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**District of Columbia**
**COURT Of APPEALS**

**No. 87-97**

***FILED* MAY 26 1987**

**IN RE: SIMON BANKS, Respondent.**

Clerk

(Argued May 12, 1987 Decided May 26,

1987)

**MEMORANDUM OPINION AND JUDGMENT**

This cause came on to be heard on (a) respondent's motion for summary judgment; and (b) petitioner's cross-motion for summary judgment, with oppositions thereto.

It appears that there are genuine issues of fact with respect to both motions. Accordingly, respondent's motion for summary judgment and petitioner's cross-motion for summary judgment will not be granted.

Based upon the showing made thus far in this proceeding, it is concluded that a temporary restraining order should be issued forbidding respondent, Simon Banks, from (1) practicing law in the District of Columbia; and (2) giving the public the impression

that he is authorized to practice law in the District of Columbia, in violation of D.C. App. R. 49 (b), which provides:

(b)_ Practice of law in the District of Columbia.

(1) No person shall regularly engage in the practice of law in the District of Columbia or in any manner hold out as authorized or qualified to practice law in the District of Columbia unless enrolled as an active member of the Bar.

(2) No person, firm, association, bank or corporation shall, in the District of Columbia, advise or counsel any person on matters affecting legal rights, or practice or appear as an attorney at law for a person other than such person in any court, or furnish an attorney or attorneys to render legal services, or hold out to the public as being entitled to practices; or in any other manner assume to be an attorney at law, or assume, or use or advertise the title of lawyer, attorney or counselor, or any equivalent title, in such manner as to convey the impression that such person is entitled to practice law, or in any manner advertise that such person either alone or together with any other person or persons maintains an office for the practice of law in the District of Columbia, without being an enrolled active member of the Bar.

(3) The practice of law as used in this rule shall include, but is not limited to, appearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any other instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting the disposition of property or decedents' estates, or any pleadings of any kind in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other matters of law.

It further appears that this proceeding should be set promptly for the hearing of evidence on (a) the request for a preliminary and permanent injunction; (b) an accounting by respondent, Simon Banks, of all fees received; (c) restitution of all fees received; and (d) public notice by respondent that he is not authorized to provide legal services in the District of Columbia.

Accordingly, it is

ORDERED and ADJUDGED that respondent's notion for summary judgment is hereby denied, and it is

FURTHER ORDERED that petitioner's cross-motion for summary judgment is hereby denied, and it is

FURTHER ORDERED that petitioner's request for a Temporary Restraining order is hereby granted (see accompanying order), and it is

FURTHER ORDERED that the hearing on the request for preliminary and permanent injunctions will commence promptly at 1:30 o'clock on June 15, 1387, in the courtroom of the District of Columbia Court of Appeals, Sixth Floor, 500 Indiana Avenue, N.W., Washington, D.C., before Judge Gallagher.

BY THE COURT:
GEORGE R. GALLAGHER
Senior Judge

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**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS CASE NO. 96-BG-00114**
**ORDER**
**04/18/96 ORDER B**

This Court has before it respondent's demand for a jury trial and motion to dismiss the case and vacate the injunction, the opposition filed by the United States and respondent's memorandum of points and authorities en banc in support of request for trial by jury and response to government's opposition to respondent's request for trial by jury.

In essence, respondent's motion to dismiss is an attack upon order #18 issued by this court on January 13, 1995 in Re

Simon Banks, 92-BG-652 (DCCA). Inasmuch as order #18 presently is on appeal, respondent's attack on such order should be pursued in the context of that appeals. Whether or not respondent's appeal has any merit is not an issue to be decided by this court. For these purposes, however, and attacks on the appeal of order #18 have no impact on the proceedings here, in the absence of a decision from the Court of Appeals relating to order #18. Rather than spend judicial time responding to the various points raised in the motion to dismiss, the court notes that the virtually all of the arguments raised by respondent were dealt with in order #18, Order #6 (Dec. 9, 1993); order #9 (Feb. 18, 1994) and order #13 (April 21, 1994) all filed in 92-BH-652. Indeed, in order #6, the court traced the long history of respondent's arguments and noted the proceeding in which they were resolved. The Court also noted in order #6 the preclusive effect of prior rulings and the appeals there from that preceded what became order #18.

These are two matters that do warrant brief comment. In his motion to dismiss (pp. 3-4) respondent makes reference to Debra Gudger and Stephen Spencer. It should be noted that these individuals were not called as witnesses at the individuals were not called as witnesses at the evidentiary hearing that preceded order #18.

The second matter pertains to order #18 and its reference to D.C. App. R. 49 (c). (Order #18 at 47, 62). Order #18 stated that the exception in rule 49 (c ) (4) could not provide the sole basis for respondent appearing before any federal agency in a representative capacity.

Initially, respondent demanded a trial by jury without offering any authority to support of the request. In response, the United States noted the commitment of the court that any total penalty, in the event respondent were adjudicated in contempt of court, not exceed six months imprisonment and/or a fine of more than $1000. (Gov opp. To jury trial demand at 1).

Inasmuch as respondent, in the event of a conviction, faces a total period of imprisonment not exceeding six months, he is not entitled to a jury trial. (Judge Richard A. Levie) EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS CASE NO. 96-BG-00114**
**ORDER**
**04/22/96 ORDER C**

The Court has before it respondent's motion for continuance of the hearing and jury trial and the government's opposition. In support of this motion, respondent relies upon his: motion to dismiss; motion to recuse; motion for declaratory judgment; motion for discovery; motion to strike all filings of the United States; motion to strike all filing of the District of Columbia Corporation Counsel and upon "Due Process, Procedural Fairness and the interest of justice."

All of the 'reliance" motions listed above except the one for discovery, indicate that such motions are filed "en banc". Notwithstanding the titles, it is not entirely clear from the content of such motions whether or not they are, in fact, filed "en banc".

Aside from referring to other motions, the motion for continuance states that respondent needs a 90 day continuance to complete discovery, obtain counsel and allow for disposition of his motions. The Court finds the grounds asserted by respondent to be without merit.

The government's opposition responds to each of the reasons set forth by respondent. The court finds the opposition to be persuasive. In addition, when respondent first raised some of these issues at the status hearing on April 1, 1996, the Court noted that the counts of the order to show cause, for the most part, are based upon documentary evidence. The government asserts that discovery has been provided and the court notes that the instant motion, filed one week after the discovery occurred, does not assert otherwise.

With respect to obtaining counsel, in addition to what is mentioned in the opposition, the court notes that respondent informed the Court on April that he had been consulting actively with counsel and that various counsel, including the ACLU, were coming to see him. Respondent was informed at that time of the importance of finding counsel who would be available for trial on May 1. As noted, Order A, issued April 3 1996, provided for respondent to be interviewed immediately by the Criminal Justice Act Program if respondent believed that he wanted counsel, but might be unable to afford counsel.

Respondent has been filing any number of motions on a relatively frequent basis. As noted in Order B, at least some of these motions have several recurring themes. The filing of motions, without more, is not a basis to delay the trial. To conclude otherwise, particularly where the motions raise the same or related arguments repeatedly, would permit respondent alone to control the commencement date of the trial by delaying the filing of some motions until close proximity to the trial date.

For the reasons set forth above, it is this 22nd day of April, 1996:

ORDERED that respondent's motion for continuance of the hearing and jury trial is denied. Judge Richard A. Levie
EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS** **CASE NO. 96-BG-00114**
**ORDER**
**05/22/96 ORDER E**

The Court has before it respondent's letter, date May 11, 1996, seeking reconsideration of this Court's decision to hold respondent without bond pending his sentencing, respondent's May 16 motion for reconsideration and for emergency release on personal recognizance and the government's opposition to respondent's letter and motion.

Following the Court's May 8, 1996 finding after a non-jury trial that respondent was guilty of five counts of criminal contempt, the Court ordered respondent be detained without bond pending his June 5 sentencing. After hearing from respondent and counsel for the Government, the Court concluded that respondent had failed to demonstrate by clear and convincing evidence that he would not be likely to flee or pose a danger to other persons or property. At that time the Court stated its reasons on the record and incorporates them herein by reference.

In essence, the Court noted that respondent's convictions 4reepresented findings of intentional and deliberate violation of the Court's earlier injunctive order (order #18). The Court also noted that in October, 1994, three months before the issuance of Order #18, respondent filed a document with the Court expressing respondent's intention to comply with an earlier injunction issued by Judge Gallagher and noting respondent's intention to avoid

written references to language barred by Judge Gallagher's order in respondent's stationery and written materials. Notwithstanding the issuance of order #18 which , among other things, repeated Judge Gallagher's prohibition against respondent using certain language and phraseology, respondent continued to use such language, as was evidenced by the five guilty verdicts.

Moreover, the testimony adduced at the contempt trial clearly established that respondent's use of the term "former administrative law judge" let one of respondent's clients to believe that respondent was a former judge. Another client was induced by respondent's clients to believe that respondent was a former judge. Another client was induced by respondent's office setting, his writing materials and his words to believe that she was intrusting her case to an attorney. Indeed, the sign outside respondent's office was a relatively large bronze plaque containing the same offending phrase. It was a plaque that attracted on of the Government's witnesses to respondent in the first place.

The conduct set out above illustrates the conscious actions taken by respondent to ignore the Court's order and to deliberately and intentionally foster to the public the impression that he was an attorney and/or a former judge.

In the May 11 letter respondent complains about what he characterizes as deplorable and inhumane conditions at the D.C. Jail which he asserts aggravated his asthma. He also apologizes for his failure to comply with the Court's earlier order and itemizes the financial and emotional hardship caused him and his family by the Court's bond decision. In his May 16 motion respondent repeated the items outlined in his May 11 letter and essentially blamed the Committee on the Unauthorized Practice of Law and Stuart Pierson for his violation of order #18.

The Court agrees with the position set out in the Government's opposition, in addition to the reasons set forth above and at the bond hearing held on May 8, 1996. Respondent continues to fail to establish by clear and convincing evidence that he is not a danger to the person and property of others.

The Court does note, however, that respondent was placed in the general population and, at the Court's request, was seen by the facility psychologist and medical staff. It was reported to the Court that no evidence was found of any asthmatic condition that respondent had adjusted well to his situation. If there are conditions at the D.C. Jail that should be dealt with, respondent

can properly raise such issues. These issues, however, do not warrant any change in respondent's bond pending sentence.

Accordingly, for the reasons set forth above, it is this 22nd ay of May, 1996:

ORDERED that respondent's motion for reconsideration and for emergency release on personal recognizance is denied. (Judge Richard A. Levie)
EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS** **CASE NO. 96-BG-00114**
**ORDER**
06/05/96 **ORDER** (Judgment and Commitment/Probation Order)

The respondent having entered a plea of not guilty to the charges of Counts 1, 2, 3, 4 & 6 – Criminal Contempt and having been found guilty by the Court it is hereby ORDERED that the defendant has been convicted of an is guilty of the offenses charged, and is hereby sentenced to County One – 178 days ESS and 5 years probation. Conditions of probation are (1) comply with paragraph 1-14 of order #18m dated Jan. 13, 1995 – DCCA No. 92-BG-652; (2) report to probation officer within 24 hours; (3) by June 10, 1996 provide probation officer with a list of all existing clients; (4) by June 13, 1996 provide probation officer with a copy of a letter to be sent to all clients containing the language in paragraph (6) of order #18 Page 61), requesting such clients to return an acknowledgement as set forth in paragraph (7) of order #18 and offering to return to each client said client's files within 72 hours of receipt from the client of a request for files; (5) imme4diately cease using all stationery and written materials containing language prohibited by order #18; (6) immediately remove the sign at the M Street, SW address referring to Former Administrative Law Judges: (7) probation officer is to contact clients of Mr. Banks to insure compliance with this order; (8) probation officer is authorized to disclose all information regarding Mr. Banks to the Office of the United States Attorney, Counts 2, 3, 4, and 6 – 178 days ESS with 5 yrs. Probation, same conditions as count 1 and all counts are concurrent. (Judge Levie)
EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS CASE NO. 96-BG-00114**
**ORDER**
**06/07/96 ORDER**

On consideration of the pro se application of respondent for review en banc and modification of conditions of release and memorandum of points and authorities in support thereof; the emergency motion of respondent for writ of habeas corpus, to release respondent from incarceration on personal recognizance and/or surety bond pending sentencing and disposition; and the emergency motion of respondent to stay sentencing and order the recusal of Judge Richard A. Levie pending disposition of respondent's petition to the Supreme Court for writ of habeas corpus pursuant to 28 USC Sec 2251, and it appearing that respondent has been sentenced and released, it is

ORDERED that the application for review en banc, construed as a petition for rehearing or petition en banc, is struck as improperly filed. See DC. App. R. 40. It is

FURTHERED ORDERED that the remaining aforementioned motions are denied as moot. (By FE, RZ, RD) EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS CASE NO. 96-BG-00114**
**ORDER**
**08/21/97 ORDER**

On consideration of respondent's emergency motion en banc for temporary injunctive relief to enjoin and to stay the order of contempt until the court provides respondent with more definite statement for the judgment and commitment order, and respondent's emergency motion en banc to recuse the judge based upon judicial bias conflict of interest and threat to punish respondent if respondent did not pay Stuart Pierson and his law firm, Davis Wright Tremaine $57,000, it is

ORDERED that respondent's emergency motion en banc for temporary injunctive relief to enjoin and to stay the order of contempt until the court provides respondent with a more definite statement for the judgment and commitment order is denied. It is

FURTHER ORDERED that respondent's emergency motion en banc to recuse the judge based upon judicial bias conflict of interest and threat to punish respondent if respondent did not pay Stuart Pierson and his law firm, Davis Wright Tremaine $57,000 is referred to Judge Richard A. Levie for disposition. (By TE, SC)
EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS** **CASE NO. 96-BG-00114**
**ORDER**
**08/25/97 ORDER**

On consideration of respondent's emergency motion en banc appeal of the court's denial of respondent's emergency motion en banc for temporary **ORDERED** injunctive relief to enjoin and to stay the order of contempt until the court provides respondent with a more definite statement for the judgment and commitment order, construed as a motion for reconsideration, and respondent's motion to stay proceedings pending disposition of respondent's emergency en banc appeal of the court's denial of respondent's emergency motion en banc for temporary injunctive relief to enjoin and to stay the order of contempt until the court provide respondent with a more definite statement for the judgment and commitment order, it is

that respondent's emergency motion en banc appeal of the court's denial of respondent's emergency motion en banc for temporary injunctive relief to enjoin and to stay the order of contempt until the court provides respondent with a more definite statement for the judgment and commitment order, construed as a motion for reconsideration is denied. It is

**FURTHER ORDERED** that respondent's motion to stay proceedings pending disposition of respondent's emergency en banc appeal of the court's denial of respondent's emergency motion in banc for temporary injunctive relief to enjoin and to stay

the order of contempt until the court provide respondent with a more definite statement for the judgment and commitment order is referred to Judge Richard A. Levie for disposition. (By TE, SC, KG)
EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS CASE NO. 96-BG-00114**
**ORDER**
08/26/97 **ORDER J**

**ORDERED** that respondent's emergency motion en banc for temporary injunctive relief to enjoin and stay the order of contempt until court provide respondent with a more definite statement for the judgment and commitment order is denied. (Judge Levie)
EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS CASE NO. 96-BG-00114**
**ORDER**
**08/28/97 ORDER L**

With the consent and agreement of respondent, Simon Banks, it is this 28th day of August, 1997:

**ORDERED** that respondent, Simon Banks (1) shall immediately withdraw and cease from representing any persons before any federal, District of Columbia or state administrative or regulatory agency; (2) shall not give advice to any person regarding any matter in connection with any federal, District of Columbia or state administrative or regulatory agency; (3) shall not prepare for filing any papers before any federal, District of Columbia or state administrative or regulatory agency on behalf of any person; (4) shall not appear before any federal, District of Columbia or state administrative or regulatory agency on behalf of any person; (5) shall not represent in any fashion any person before any federal, District of Columbia or state administrative or regulatory agency on behalf of any person; and it is

**FURTHER ORDERED** that this order shall apply to all national, local or regional offices of all federal, district of Columbia or state

**FURTHER ORDERED** that this order shall be circulated by the Office of the United States Attorney and the Probation Office. (Judge Levie)
EBROOKS

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**
**IN RE SIMON BANKS** **CASE NO. 96-BG-00114**
**ORDER**
**09/23/97 ORDER**

On consideration of respondent's emergency motion en banc for dismissal of the case, for vacation of all orders for emergency stay of execution of sentence on the basis that the D.C. Court of Appeals appointment of the United States Attorney to prosecute and convert the civil contempt proceedings into a criminal contempt proceeding was unconstitutional and in violation of the tenth amendment, the separation of powers doctrine, the delegation doctrine and article 1 of the federal constitution, it is

**ORDERED** that respondent's motion is denied. (By TE, SC, KG)
EBROOKS

**Rule 49 Unauthorized Practice of Law**

Editor's Note: Rule 49 of the District of Columbia Court of Appeals addresses the unauthorized practice of law. The text below was adopted by **Order M-198-96 of the D.C. Court of Appeals, with an effective date of February 1, 1998;** and by Order M-212-01, with an effective date of April 30, 2002. Questions about this rule should be directed to the Court's Committee on Unauthorized Practice of Law at 202-879-2777.

**General** **Rule**
No person shall engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to

practice law in the District of Columbia unless enrolled as an active member of the District of Columbia Bar, except as otherwise permitted by these Rules.

a. **Definitions**

The following definitions apply to the interpretation and application of this rule:

1. "Person" means any individual, group of individuals, firm, unincorporated association, partnership, corporation, mutual company, joint stock company, trust, trustee, receiver, legal or business entity.

2. "Practice of Law" means the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

A. Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, will, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

B. Preparing or expressing legal opinions;

C. Appearing or acting as an attorney in any tribunal;

D. Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;

E. Providing advice or counsel as to how any of the activities described in subparagraph (A) through (D) might be done, or whether they were done, in accordance with applicable law;

F. Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

3. "In the District of Columbia" means conduct in, or conduct from an office or location within, the District of Columbia, where the person's presence in the District of Columbia is not of incidental or occasional duration.

4. "Hold out as authorized or competent to practice law in the District of Columbia" means to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the District of Columbia. Among the characterizations which give such an indication are "Esq.," "lawyer," "attorney at law," "counselor at law," "trial or legal advocate," "legal representative," "legal advocate," and "judge."

5. "Committee" means the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law, as constituted under this rule.

b. **Exceptions**

The following activity in the District of Columbia is excepted from the prohibitions of section (a) of this Rule, provided the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia:

1. United States Government Employee: Providing authorized legal services to the United States as an employee thereof;

2. United States Government Practitioner: Providing legal services to members of the public solely before a special court, department or agency of the United States, where:

A. Such legal services are confined to representation before such fora and other conduct reasonably ancillary to such representation;

B. Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice; and

C. If the practitioner has an office in the District of Columbia, the practitioner expressly gives prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

3. Practice Before a Court of the United States: Providing legal services in, and reasonably
4. District of Columbia Employee: Providing legal services for his or her employer during the first 360 days of employment as a lawyer by the government of the District of Columbia, where the person is an enrolled Bar member in good standing of a state or territory and has been authorized by her or his government agency to provide such services;

5. District of Columbia Practitioner: Providing legal services to members of the public solely before a department or agency of the District of Columbia government, where:

A. Such representation is confined to appearances in proceedings before tribunals of that department or agency and other conduct reasonably ancillary to such proceedings;

B. Such representation is authorized by statute, or the department or agency has authorized it by rule and undertaken to regulate it;

C. If the practitioner has an office in the District of Columbia, the practitioner expressly gives prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited consistent with this section (c); and

D. If the practitioner does not have an office in the District of Columbia, the practitioner expressly gives written notice to clients and other parties with respect to any proceeding before tribunals of that department or agency and any conduct reasonably ancillary to such proceedings of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

6. Internal Counsel: Providing legal advice only to one's regular employer, where the employer does not reasonably expect that it is receiving advice from a person authorized to practice law in the District of Columbia;
7. Pro Hac Vice In the Courts of the District of Columbia: Providing legal services in the courts

of the District of Columbia, following admission pro hac vice, provided:

i. Limitation to 5 Applications Per Year. No person may apply for admission pro hac vice in more than five (5) cases pending in the courts of the District of Columbia per calendar year, except for exceptional cause shown to the court.

ii. (ii) Applicant Declaration. Each application for admission pro hac vice shall be accompanied by a sworn statement as follows:

I declare under penalty of perjury: (1) that I have not applied for admission pro hac vice in more than five cases in courts of the District of Columbia this calendar year, (2) that I am a member in good standing of the highest court(s) of the State(s) of (*state all states*), (3) that there are no disciplinary complaints pending against me for violation of the rules of the courts of those states, (4) that I have not been suspended or disbarred for disciplinary reasons from practice in any court, (5) that I am associated with (*name the D.C. Bar member and give his/her Bar number*) under Super. Ct. Civ. R. 101, (6) that I do not practice or hold out to practice law in the District of Columbia, and (7) that I have read the rules of the relevant division of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, and have complied fully with District of Columbia Court of Appeals Rule 49 and, as applicable, Super. Ct. Civ. R. 101. The reason(s) I am applying for admission pro hac vice are as follows:

I acknowledge the power and jurisdiction of the courts of the District of Columbia over my professional conduct, and I agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct in this matter, if I am admitted pro hac vice.

iii. Office Outside of D.C. No person who maintains or operates from an office or location for the practice of law within the District of Columbia may be admitted to practice before a court of the District of Columbia pro hac

vice, unless that person qualifies under another express exception provided in section (c) hereof.

iv. Supervision. Any person admitted pro hac vice must comply with Super. Ct. Civ. R. 101 and other applicable rules of the District of Columbia courts.

v. Application Fee. Application to participate pro hac vice shall be accompanied by a fee of $100.00 to be paid to the Clerk of Court. Proof of payment of the fee shall accompany the application for admission pro hac vice. The application fee shall be waived for a person whose conduct is covered by section (c)(9) hereof, or whose client's application to proceed in forma pauper is has been granted.

vi. Filing. The applicant first shall submit a copy of the application to the office of the Committee, pay the application fee, and there receive a receipt for payment of the fee; whereupon the applicant shall file the application with the receipt in the appropriate office of the Clerk of Court. Only certified checks, cashiers checks, or money orders will be accepted in payment of the fee, made payable to "Clerk, D.C. Court of Appeals." The application will not be accepted for filing without the required receipt.

vii. Power of the Court. The court to which the relevant litigation matter is assigned may grant or deny applications, and withdraw admissions to participate pro hac vice in its discretion.

8. Limited Duration Supervision By D.C. Bar Member: Practicing law from a principal office located in the District of Columbia, while an active member in good standing of the highest court of a state or territory, under the direct supervision of an enrolled, active member of the District of Columbia Bar, for one period not to exceed 360 days from the commencement of such practice, during pendency of a person's first application for admission to the District of Columbia Bar; provided that the practitioner has submitted the application for admission within ninety (90) days of commencing practice in the District of Columbia, that the District of Columbia Bar member takes responsibility for the quality of the work and complaints concerning the services, that the

practitioner or the District of Columbia Bar member gives notice to the public of the member's supervision and the practitioner's bar status, and that the practitioner is admitted pro hac vice to the extent he or she provides legal services in the courts of the District of Columbia.

9. Pro Bono Legal Services: Providing legal services pro bono public in the following circumstances:

Where the person is an enrolled, inactive member of the District of Columbia Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee; provided that, if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.

A. Where the person is a member in good standing of the highest court of any state, and is employed by the Public Defender Service, or is employed by or affiliated with a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee; provided that the person has submitted an application for admission to the District of Columbia Bar within ninety (90) days after commencing the practice of law in the District of Columbia, and that such attorney is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the non–profit organization.

B. Where the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.

An attorney practicing under this section (c)(9) shall give notice of his or her bar status, and shall be subject to the

District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the District of Columbia Bar.
An attorney may practice under Part (B) of this section (c)(9) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Minority Business Opportunity Commission**
Charlotte G. Chapman Courtland Cox
Chairperson Executive Director
Simon Banks & Associates February 21, 1980
1500 Massachusetts Ave., N.W.
Washington, DC 20003
Attn: Simon Banks
Dear Mr. Banks,
The District of Columbia Minority Business Opportunity Commission in its meeting on February 5, 1980 certified and registered your business enterprises in the Sheltered Market Program as promulgated By D.C. Law 1-95" Minority Contracting Act of 1976", and therefore said enterprise is duly registered by the Commission under the following work classification (s):
Administrative Law Judge & Hearing Examiners, Legal Consultants
The certificate of registration, according to Section 9 (c ) of D.C. Law 1-95, will expire two years from the effective date of approval. Bidding on Sheltered Market contracts shall be limited to the above work classifications (s), and this letter must be attached to the from of the contractor's scaled bid.
Date of Approval February 5, 1980 **Certification Number 3495**
Date of Expiration March 20, 1980

*Charlotte G. Chapman*
Chairman

613 G Street, N.W. Washington, DC 20001 202-727-3818

**VOL. 42 – NO. 3 FRIDAY, JANUARY 20, 1995**
**District of Columbia REGISTER**

**HIGHLIGHTS**

MAYOR SCHEDULES PUBLIC HEARING ON FY 1996 PROPOSED LEVEL OF PUBLIC FUNDING FOR D.C. PUBLIC SCHOOLS

COUNCIL SCHEDULE PUBLIC HEARING ON SOLID WASTE FACILITY PERMIT ACT OF 1995

DEPARTMENT OF RECREATION AND PARKS ADOPTS FINAL RULES TO IMPLEMENT USER FEES

CONSUMER AND REGULATORY AFFAIRS PROPOSES PROCEDURAL RULES FOR OFFICE OF ADJUDICATION

OFFICE OF GRANTS MANAGEMENT AND DEVELOPMENT REQUESTS COMMENTS ON STATE DRUG STRATEGY

HUMAN SERVICES ANNOUNCES DISCONTINUATION OF EVENING HOURS AT NEIGHBORHOOD HEALTH CENTERS **Pp 23 or (396)**

**"ALJ" means the Administrative Law Judge, Attorney Examiner/ALJ or Hearing Examiner authorized to hear the case before OAD.**

"Case" means the formal proceedings initiated by the filing of a petition before OAD.

"Complaint" means a formal request for assistance filed by a complainant with the District of Columbia government.

"Complainant" means a person, or his or her representative, who filed a complaint which is the basis of the petition.

"Consent Decree" means an agreement entered into by all parties to resolve a complaint either before, during or after a hearing.

"DCRA" or "Department: means the D.C. Department of Consumer and Regulatory Affairs.

"Director" means the Director of DCRA.

"Decision and Order" means the final judgment rendered by the ALJ after a hearing has been held.

"Fraud" means misrepresentation of a present or past fact made by a respondent, with action in reliance thereupon by the

complainant, and damage resulting to complainant from such misrepresentation. This misrepresentation need not be communicated orally but can be such as to lead a reasonable person to believe such facts exist.

"Mistake" can be either of fact or of law, and exists when a person under some erroneous conception of law or fact does or omits some act which, but for the erroneous conception, he or she would not have done or omitted. Mistake of fact or law, other than mutual mistake, is not a defense.

"Party" means the Petitioner, the Respondent, the Complainant, or any person who has been permitted by OAD top intervene in the proceeding before the ALJ, or has been joined in the proceeding by OAD.

"Person" means an individual, firm, corporation, partnership, cooperative, association, or any other organization, legal entity, or group of individuals however organized.

"Petition" means a request for a hearing before, and a demand that remedies be ordered by, the ALJ, even if such filing does not meet the requirements of petition set forth in §3505.1 as long as it meet the requirements of the statute authorizing the action.

**COUNCIL OF THE DISTRICT OF COLUMBIA**
**NOTICE**
**D.C. LAW 13-229**
**"Workers' Compensation Administrative Law Judges Amendment Act of 2000"**

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill 13-878 on first and second readings November 8, 2000 and December 5, 2000, respectively. Following the signature of the Mayor on December 21, 2000, pursuant to Section 404(e) of "the Act", the bill became Act 13-506 and it was published in the January 26, 2001 edition of the D.C. Register (Vol. 48, page 572). The Act was transmitted to Congress on February 2, 2001 for a 30-day review, in accordance with Section 602 (c )(1) of the Act.

The Council of the District of Columbia hereby gives s notice that the 30-day Congressional review period has expired, and the Act is now D.C. Law 13-229, effective April 3, 2001.

Linda W. Cropp
Chairman of the Council

Days Counted During the 30-day Congressional Review Period
Feb. 6,7,8,12,13,14,15,19,20,21,22,23,26,27,28,29,30
Apr.2

AN ACT
D.C. ACT 13-506
IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
DECEMBER 21, 2000
To amend the **District of Columbia workers' Compensation Act of 1979** to reclassify the Office of Workers' Compensation Hearing Examiners as Administrative Law Judges
BE IN ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as **the "Workers' compensation Administrative Law Judges Amendment Act of 2000".**

Sec.2.Section 44 (b) and (c) of the District of Columbia Workers' Compensation Act of 1979 are amended to read as follows:

"(b) **The Mayor shall reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges ("ALJs")** and raise their level of compensation.

"( c) The Mayor shall develop performance measures and qualifications for the ALJs for the Office of Workers' Compensation".

Sec, 3. Fiscal impact statement.
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602 (c ) (3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c ) (3)).
Sec. 4. Effective date.

This act shall take effect following approval b the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203 (a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995

(109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c ) (1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233 (c) (1)), and publication in the District in Columbia Register.
Linda W. Cropp Chairman
Council of the District of Columbia, Anthony A. Williams
Mayor
District of Columbia, APPROVED: December 21, 2000

**DISTRICT OF COLUMBIA**
**COURT OF APPEALS**

Dec 9, 1998
**M-198-96**
**BEFORE: Wagner, Chief Judge, and Terry Steadman, Schwelb, Ferrell**
**King, Ruiz, and Reid, Associate Judges**

ORDER

On consideration of the proposed amendments to D.C. App. R. 49, it is ORDERED that D.C. App. R. 49 is amended, effective February 1, 1998, to read as follows:

**Rule 49.** Unauthorized Practice of Law

(a) General Rule

No person shall engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia Bar, except as otherwise permitted by these Rules.

(b) Definitions

The following definitions apply to the interpretation and application of this rule:

(1) **"Person"** means any individual, group of individuals, firm, unincorporated association, partnership, corporation, mutual ompany, joint stock company, trust, trustee, receiver, legal or business entity.

(2) **"Practice of Law"** means the provision of professional legal advice or services where there

is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

(A) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, wi9lls, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

(B) Preparing or expressing legal opinions;

(C) Appearing or acting as an attorney in any tribunal;

(D) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;

(E) Providing advice or counsel as to how any of the activities described in sub-paragraph (A) through (D) might be done, or whether they were done, in accordance with applicable law;

(F) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

(3) **"In the District of Columbia"** means conduct in, or conduct from an office or location within, the District of Columbia, where the person's presence in the District of Columbia is not of incidental or occasional duration.

(4) **"Hold out as authorized or competent to practice law in the District of Columbia"** means to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the District of Columbia. Among the

characterizations which give such an indication are "Esq., "lawyer," "attorney at law," "counselor at law," "trial or legal advocate," "legal representative," "legal advocate," and "judge."

(5) **"Committee"** means the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law, as constituted under this rule.

© **Exceptions**

The following activity in the District of Columbia is excepted from the prohibitions of section (a) of this Rule, provided the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia:

(1) United States Government Employee: Providing authorized legal services to the United States as an employee thereof;

(2) United States Government Practitioner; Providing legal services to members of the public solely before a special court, department or agency of the United States, where;

(A) Such legal services are confined to representation before such for a and other conduct reasonably ancillary to such representation

(B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice; and

(C) The practitioner expressly gives prominent notice in all business documents that his or her practice is "limited to matters and proceedings before federal courts and agencies."……

(5) District of Columbia Practitioner: Providing legal services to members of the public solely before a department or agency of the District of Columbia government, where:

(A) Such representation is confined to appearances in proceedings before tribunals of that department or agency and other conduct reasonably ancillary to such proceedings;

(B) Such representation is authorized by statute, or the department or agency has authorized it by rule and undertaken to regulate it; and

(C) The practitioner expressly gives prominent notice in all business documents that his or her practice is "limited to matters and proceedings before [specifically-named District of Columbia agencies] under District of Columbia Court of Appeals Rule 49©(5)."……..

Representation of non-Bar members must avoid giving the impression to persons not learned in the law that a person is qualified legal professional subject to the high ethical standards and discipline of the District of Columbia Bar.

The listing of terms, which normally indicate one is holding oneself out as authorized or qualified to practice law, is not intended to be exhaustive. The definition of "hold out" is intended to cover any conduct which gives the impression that one is qualified or authorized to practice law. **See *In Re: Banks*, 561 A.2d 158 (D.C. 1987).**

Where a member of the public correctly understands that a person is not admitted to the District of Columbia Bar but is nonetheless offering to perform services functionally equivalent to those performed by a lawyer, that person is subject to sanction under the consumer protection statutes of the District of Columbia. **See *Banks v. D.C. Dept. of Consumer and Regulatory Affairs*, 634 A.2d 433 (D.C. 1993).**

**Commentary to §49(b)(3):**

**Section (b)(3) is new**. It is intended to clarify by explicit definition the geographic extent and limits of the Rule.

The Rule is intended to regulate all practice of law within the boundaries of the District of Columbia. The fact that an attorney is associated with a law firm that maintains an office in the District of Columbia does not, of itself, establish that that attorney is maintaining an office in the District of Columbia.

The practice of law subject to this Rule is, however, not confined to the matters subject to the law of the District of Columbia. The Rule applies to the practice of all substantive areas of the law and requires admission to the District of Columbia Bar where the practice is carried on in the District of Columbia and

does not fall within one of the exceptions enumerated in section ©.....

**A transaction is related to the District of Columbia if, in consideration of the law to be applied, the location of the parties, the location of the property and interest at issue, and the location of the services provider, the primary place of the provision of legal services is within the District of Columbia dn the provider's location is within the District, the primary place of the services is within the District. Where a person is practicing law from an office in the District of Columbia, any transaction he or she engages in are within the District. Where a transaction concerning real estate located in the District of Columbia is consummated in the District of Columbia, the primary place of the legal services is the District, unless they are provided by an attorney not having a principal place of business in the District and the services are incidental to a continuing service to a client not located in the District.**

**The definition of "in the District of Columbia"** is not intended to embrace the more or less frequent appearance before federal agencies located in the District of Columbia by attorneys admitted to bars in other jurisdictions, where the location of their practices is outside the District of Columbia, and their professional appearances in the District of Columbia are solely in connection with their representation of clients before such federal agencies. **For example, a lawyer who is admitted an maintains his office in Illinois, and who represents his clients before the Federal Communications Commission and who, from time-to-time, is required to come into the District more or less frequently for that representation, would not be considered to be practicing in the District of Columbia, because his presence would be considered of incidental duration in the circumstances.**

**Commentary to § 49©:**

Section © follows the design of the original Rule in setting forth exceptions. As noted in the new language in section 49(a), only express exceptions remove conduct from the requirements of the Rule; and the exceptions apply only to the extent that the person is not otherwise engaged in or holding out to engage in the practice of law.....

The United States Supreme Court has held that states may not limit practice before a federal agency, or conduct incidental to

that practice, where the agency maintains a registry of practitioners and regulates standards of practice with sanctions of suspension or disbarment. *Sperry v. State of Florida,* 373 U.S. 379 (1963). By contrast, a person advertising patent advice and search services who is not on the Patent Office Registries of attorneys and agents is subject to the jurisdiction of the District of Columbia Court of Appeals through its Committee on the Unauthorized Practice of Law. *In re Amalgamated Development Co., Inc.,* 375 A.2d 494 (D.C. 1977). *See also Kennedy v. Barr Assoc. of Montgomery County,* 316 Md. 646, 561 A.2d 200 (1989); *In re Jones,* 163 Bankr, 665, 1994 Bankr. LEXIS 150 (D.Conn. 1994); and *Spanos v. Skouras Theatres Corp.,* 364 F.2d 161 (2nd Cir. 1966).

As the seat of the national government, the District of Columbia is naturally the place where people locate to provide representation of persons or entities petitioning federal departments or agencies for relief. Inasmuch as such activity would often constitute the practice of law, the Supremacy Clause of the United States Constitution, case law, and comity between the District and federal governments counsel a deference to federal departments and agencies that determine to allow persons not admitted to the Bar to practice before them. At the same time, experience under this Rule has shown that some persons have abused the deference set forth in the original rule by engaging in misleading holding out or practicing law in proceedings other than those of the authorizing federal for a.

With respect to persons who hold out and purport to provide legal representation before federal for a from locations outside the District of Columbia, the Rule does not apply **because the activity, even if the practice law, is not carried on within the District of Columbia. See section (b)(3) and the commentary thereto**.

Section ©(2) is designed to permit persons to practice before a federal department or agency without becoming members of the Bar, where the agency has a system in place to regulate practitioners not admitted to the Bar, and where the public is adequately informed of the limited nature of the person's authority to practice.

Where there is doubt whether a federal agency undertakes to regulate the quality or integrity of practitioners before it, there is necessarily doubt under section ©(2)(B) whether this exception would apply to allow persons practicing before the agency who are

not admitted to the Bar to engage in any practice of law in the District of Columbia. In order to resolve such doubt, the Committee will refer to an agency any complaints it receive concerning practitioners before the agency who are not admitted to the
Bar. If the agency does not take any action, or advises that it will not take any action, on the referred complaint in 90- days following the referral, the Committee will inform the agency that it presumes the agency does not undertake to regulate the conduct of practitioners before it; and the Committee will the proceed to consider the complaint under the provisions of Rule 49.

Under the third condition, ©, a person seeking to practice under the ©(2) exception must include the indicated notice on all letterhead, business cards, formal papers of all kinds, promotions, advertisements and any other document submitted or expression made to any third party, the public or any official entity.....

**Commentary to § 49©(5)**

**Section ©(5) is new. The former rule did not contain an exception for private practice before District of Columbia for a similar to the exception set forth for practice before departments and agencies of the United States.** In recognition, however, that the same considerations may exist for allowing persons not authorized as lawyers to represent members of the public before some District of Columbia for a, as exist before some federal agencies, this provision has been added. Like the federal-agency provision, this exception requires satisfaction of all three enumerated conditions.

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Date 12/20/00
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From Cynthia Kuhn
Number of Pages 2
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Comments: Original Committee on Examination of Rule 49.

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D.C. Bar Examination of Rule 49 Committee
Created July 1993; Report submitted to the Board of Governors December 1995

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**D.C. Bar Examination of Rule 49 Committee**
**October 1993**

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